CLERK'S COPY.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 197

COMMISSIONER OF INTERNAL REVENUE,
PETITIONER

vs.

ANNA VICKERS CRAWFORD

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 3, 1945
CERTIORARI GRANTED OCTOBER 8, 1945

No. 10885

United States

Circuit Court of Appeals

For the Ninth Circuit.

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

vs.

ANNA VICKERS CRAWFORD,
Respondent.

Transcript of the Record

Upon Petition to Review a Decision of the Tax Court of the United States

Rotary Colorprint, 55 Eleventh Street, San Francisco 60—12-11-44

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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APPEARANCES:

For Taxpayer:

GEORGE M. THOMPSON
SIDNEY D. KRYSTAL

For Comm'r:

HAROLD D. THOMAS

Docket No. 111047

ANNA VICKERS CRAWFORD,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DOCKET ENTRIES

1942

May 15—Petition received and filed. Taxpayer notified. Fee paid.

May 16—Copy of petition served on General Counsel.

May 15—Request for Circuit hearing in Los Angeles filed by taxpayer. 5/16/42 copy served.

June 15—Answer filed by General Counsel.

June 18—Copy of answer served on taxpayer—Los Angeles, California.

Aug. 10—Hearing set Sept. 20, 1943—Los Angeles, California.

1943

Sept. 20—Hearing had before Judge Arnold on merits—stipulation of facts filed. Briefs due 11/1/43. Replies 11/16/43.

Nov. 1—Transcript of hearing 9/20/43 filed.

Nov. 2—Motion for leave to file the attached brief, brief lodged, filed by General Counsel. 11/8/43 Granted. Served 11/10/43.

Nov. 9—Brief filed by taxpayer. 11/10/43 copy served.

Nov. 22—Motion for leave to file the attached reply brief, reply brief lodged, filed by taxpayer. 11/23/43. Granted.

Nov. 23—Copy of motion and reply brief served on General Counsel.

1944

Mar. 24—Memorandum opinion rendered—Arnold, J., Div. 12. Decision will be entered under Rule 50. 3/25/44 copy served.

May 16—Computation of deficiency filed by General Counsel.

May 20—Hearing set 6/14/44 on settlement.

June 2—Consent to settlement filed by taxpayer.

June 7—Decision entered, Arnold J., Div. 12.

Aug. 28—Petition for review by U. S. Circuit Court of Appeals, Ninth Circuit, with assignments of error filed by General Counsel.

Sept. 21—Proof of service filed by General Counsel. (Mrs. Anna Vickers Crawford.)

Sept. 21—Proof of service filed by General Counsel. (Sidney D. Krystal, Esq.)

1943

Sept. 23—Designation of contents of record filed by General Counsel.

Sept. 23—Statement of points filed by General Counsel.

Oct. 2—Proof of service of designation of contents of record and statement of points filed by General Counsel. [1*]

United States Board of Tax Appeal

Docket No. 111047

ANNA VICKERS CRAWFORD,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION

The above named taxpayer hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency, dated February 27, 1942, bearing the Symbols LA:IT:90D:PB, and as a basis of this proceeding alleges as follows:

I.

The petitioner is an individual, residing in the City of Los Angeles, State of California, with her

*Page numbering appearing at top of page of original certified Transcript of Record.

office at 822 Roosevelt Building, 727 West Seventh Street, Los Angeles, California.

II.

The notice of deficiency, a copy of which is attached hereto and marked Exhibit A, was mailed to the petitioner on February 27, 1942.

III.

The taxes in question are alleged deficiencies in income tax for the year 1938 in the amount of $18,018.01, for the year 1939 in the amount of $16,361.57, and for the year 1940 in the amount of $17,339.48.

IV.

The determination of tax set forth in said notice of deficiency is based upon the following errors: [2]

(a) The Commissioner erred in including in income for 1938 dividends in the sum of $2,650.55 reported by the petitioner in her federal income tax return for the year 1937.

(b) The Commissioner erred in including in income for 1938, oil royalties in the sum of $11,400.30 reported by the petitioner in her federal income tax return for the year 1937.

(c) The Commissioner erred in disallowing a deduction for 1938 for percentage depletion of oil royalties in the amount of $26,462.50.

(d) The Commissioner erred in disallowing a deduction for 1938 for membership fee in the State Chamber of Commerce in the amount of $200.00.

(e) The Commissioner erred in disallowing a

deduction for 1938 for business expenses in the sum of $2,165.78.

(f) The Commissioner erred in including in income for 1939 dividends in the sum of $2,523.88 reported by the petitioner in her federal income tax return for the year 1938.

(g) The Commissioner erred in including in income for 1939 oil royalties in the sum of $10,025.98 reported by the petitioner in her federal income tax return for 1938.

(h) The Commissioner erred in disallowing a deduction for 1939 for percentage depletion of oil royalties in the amount of $23,921.75.

(i) The Commissioner erred in disallowing a deduction for 1939 for membership fee in the State Chamber of Commerce in the amount of $100.00.

(j) The Commissioner erred in disallowing a deduction for 1939 for business expenses in the sum of $2,200.67.

(k) The Commissioner erred in including in income for 1940 dividends in the sum of $1,890.50 and corporation bond interest in the sum of $125.00, both reported by the petitioner in her federal income tax return for the year 1939. [3]

(l) The Commissioner erred in including in income for 1940 oil royalties in the sum of $9,426.02 reported by the petitioner in her federal income tax return for the year 1939.

(m) The Commissioner erred in disallowing a deduction for 1940 for percentage depletion of oil royalties in the amount of $21,997.34.

(n) The Commissioner erred in disallowing a deduction for 1940 for membership fee in the State Chamber of Commerce in the amount of $100.00.

(o) The Commissioner erred in disallowing a deduction for 1940 for business expenses in the sum of $2,061.95.

V.

The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) The petitioner is one of the heirs of J. V. Vickers. The petitioner owns undivided interests in various real properties situated in the State of California, as follows:

(1) 1/3 interest in Rancho LaBallona, hereinafter more particularly described.

(2) 1/7th interest in Kinney Heights Tract, described as Lots 22, 23 and 24 in Block 1 of the Kinney Heights Tract, in the City of Los Angeles, County of Los Angeles, State of California, as per map recorded in Book 78, Page 50 of Miscellaneous Records of said County.

(3) 1/7th interest in Rancho San Rafael.

(4) 1/14th interest in Lots 37, 38 and the Southeasterly Half of Lot 39, in Block 27 of the Wolfskill Orchard Tract, in the City of Los Angeles, County of Los Angeles, State of California, as per map recorded in Book 30, Page 9, et seq. Miscellaneous Records of said County.

(5) 1/7th of a 1/3rd interest in Lots 5, 6, 7, 13, 14, 15 and that portion of Lots 4 and 12 lying Northeasterly of Fifth Street, in [4]

Block 17 of Woolen Mill Tract, in the City of Los Angeles, County of Los Angeles, State of California, as per map recorded in Book 42, Page 409 of Maps.

(6) 1/7th interest in the Rancho Las Bolsas, County of Orange, State of California and described as the Northwest Quarter of the Southeast Quarter of the Northwest Quarter of Section 36, Township 5 South, Range 11 West, S. B. B. & M. estimated to contain 10 acres.

The petitioner also owns diverse securities and other income producing properties.

(b) On or about April 12, 1924, the petitioner, Florence Vickers McAllister and Clara Vickers Naftzger, as Lessors, executed a lease with Standard Oil Company for the drilling of oil on a portion of the said Rancho LaBallona property, in which property each of the said Lessors owned an undivided one-third interest. Said lease is hereinafter referred to as "Standard-Vickers Lease No. 1". A true copy of said lease, marked Exhibit B, is attached hereto, incorporated herein by reference, and made a part hereof as though fully set forth herein.

(c) On or about January 6, 1925, petitioner, Florence Vickers McAllister and Clara Vickers Naftzger, as Lessors, executed a lease with the Standard Oil Company for the drilling of oil on another portion of the said Rancho LaBallona property, in which each of said Lessors owned an undivided one-third interest. Said lease is hereinafter referred to as "Standard-Vickers Lease No. 2". A

true copy of said lease, marked Exhibit C, is attached hereto, incorporated herein by reference, and made a part hereof as though fully set forth herein.

(d) On or about April 18, 1924, the petitioner, Florence Vickers McAllister and Clara Vickers Naftzger, as Lessors, executed a lease with the Associated Oil Company for the drilling of oil on another portion of the said [5] Rancho LaBallona property, in which each of said Lessors owned an undivided one-third interest. Said lease is hereinafter referred to as "Associated-Vickers Lease". A true copy of said lease, marked Exhibit D, is attached hereto, incorporated herein by reference, and made a part hereof as though fully set forth herein.

(e) During the years, 1938, 1939 and 1940, and for many years prior thereto, the petitioner kept her books of account and filed her income tax returns on a combined cash-receipts and disbursements and accrual basis. During said period all income from royalties, rents, dividends and interest was reported on the accrual basis. All disbursements and expenditures were reported on the cash basis. The taxpayer's income tax returns were audited annually, and prior to the year 1940, agents of the Commissioner of Internal Revenue have approved and accepted the basis upon which said returns were filed.

(f) The petitioner received and reported in her tax return for the year 1938 gross royalties received pursuant to the aforesaid three leases in the aggregate sum of $165,850.54. In said return, the peti-

tioner claimed a deduction for percentage depletion of said royalties in the aggregate sum of $45,608.90.

(g) The petitioner received and reported in her income tax return for the calendar year 1939 gross royalties received pursuant to the aforesaid three leases in the aggregate sum of $153,075.82. In said return petitioner claimed a deduction for percentage depletion of said royalties in the aggregate sum of $42,095.85.

(h) The petitioner received and reported in her income tax return for the calendar year 1940, gross royalties received pursuant to the aforesaid three leases in the aggregate sum of $135,773.62. In said return petitioner claimed a deduction for percentage depletion of said royalties in the aggregate sum of $37,337.75. [6]

(i) During the month of January, 1938, the petitioner received dividends in the aggregate sum of $2,650.55. Said dividends accrued on or before December 31, 1937. Petitioner included said dividends in the sum of $2,650.55 in her Federal income tax return for the year 1937.

(j) During the month of January, 1939, the petitioner received dividends in the aggregate sum of $2,523.88. Said dividends accrued on or before December 31, 1938. The petitioner included said dividends in the sum of $2,523.88 in her income tax return for 1938.

(k) During the month of January, 1940, the petitioner received dividends in the sum of $1,890.50 and corporation bond interest in the sum of $125.00. Said dividends and bond interest accrued on or be-

fore December 31, 1939. The petitioner included said dividends in the sum of $1,890.50 and said bond interest in the sum of $125.00 in her Federal income tax return for 1939.

(1) The petitioner is engaged in the business of managing and operating her various property interests. Said property interests include undivided interests in real properties, oil leases, and complete interests in other income producing properties. For the effective and efficient operation of said business, the petitioner, together with the other heirs of the Estate of J. V. Vickers, maintained during the years, 1938, 1939 and 1940, and for many years prior thereto, an office located at 822 Roosevelt Building, 727 West Seventh Street, Los Angeles, California. The petitioner, together with the other heirs of J. V. Vickers, during 1938, 1939 and 1940, employed two employees in said offices. Said employees maintain and keep books of accounts for the petitioner and the other heirs of the Estate of J. V. Vickers, and attend to the management of the property interests involved. During the years, 1938, 1939 and 1940, the petitioner paid 2/7ths of the expenses of maintaining said office. During the year 1938, the petitioner paid the sum of $3,049.11 as her share of the said management expenses. In her federal income tax return for the year 1938 the [7] petitioner took a deduction for said management expenses in the sum of $2,165.78, representing a portion of the total management expenses paid by petitioner determined by the percentage that petitioner's taxable income for the year 1938 bore to

the petitioner's entire income including non-taxable income.

(m) During the year 1939 petitioner paid as her allocable share of said management expenses the sum of $3,126.04. In her federal income tax return for the year 1939 the petitioner claimed a deduction for a portion of said management expenses in the sum of $2,200.67, said portion being determined by the percentage that the petitioner's taxable income bore to her entire income including non-taxable income.

(n) During the year 1940 petitioner paid as her allocable share of said management expenses the sum of $2,909.85. In her federal income tax return for the year 1940 the petitioner claimed a deduction for a portion of said management expenses in the sum of $2,061.95, said portion being determined by the percentage that the petitioner's taxable income bore to her entire income including non-taxable income.

(o) The petitioner, because of her business interests, is a member of the California State Chamber of Commerce. During the year 1938 the petitioner paid her annual membership fee to the California State Chamber of Commerce in the sum of $200.00. The petitioner claimed a deduction in her income tax return for 1938 for said payment in the sum of $200.00.

(p) During the year 1939 the petitioner paid her annual membership fee to the California State Chamber of Commerce in the sum of $100.00. The petitioner claimed a deduction in her income tax

return for 1939 for said payment in the sum of $100.00.

(g) During the year 1940 the petitioner paid her annual membership fee to the California State Chamber of Commerce in the sum of $100.00. The petitioner claimed a deduction in her income tax return for 1940 for said payment [8] in the sum of $100.00.

Wherefore, petitioner prays that this Board may hear the proceeding and determine petitioner's tax liability for the years, 1938, 1939 and 1940; that it be held that there is no deficiency in petitioner's income taxes for the years, 1938, 1939 and 1940; and for such other relief as may appear equitable and proper.

(s) GEORGE M. THOMPSON
CPA ok

(s) SIDNEY D. KRYSTAL Esq ok
Counsel for Petitioner
505 Title Insurance Building
Los Angeles, California

State of California
County of Los Angeles—ss.

Anna Vickers Crawford, being duly sworn, on oath deposes and says that she is the petitioner above named; that she has read the foregoing petition and is familiar with the statements contained therein and that the facts stated therein

are true to the best of her knowledge, information and belief.

/s/ ANNA VICKERS CRAWFORD

Subscribed and sworn to before me this 7th day of May, 1942.

[Seal] /s/ MILDRED SAYLOR

Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires March 2, 1943.

EXHIBIT A

Treasury Department
Internal Revenue Service
12th Floor,
U. S. Post Office and Court House,
Los Angeles, California.

Feb. 27, 1942

Office of
Internal Revenue Agent
In Charge
Los Angeles Division
LA:IT:90D:PB

May 28, 1942

Mrs. Anna V. Crawford,
822 Roosevelt Building,
727 West Seventh Street,
Los Angeles, California.

Madam:

You are advised that the determination of your

income tax liability for the taxable year(s) 1938, 1939 and 1940 discloses a deficiency of $51,719.06 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Los Angeles, California, for the attention of LA:Conf. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,
GUY T. HELVERING,
Commissioner,
By (Signed) GEORGE D. MARTIN
Internal Revenue Agent in Charge

Enclosures:
Statement.
Form of Waiver.

PB:fpc [10]

STATEMENT

LA:IT:90D:PB

Mrs. Anna V. Crawford,
822 Roosevelt Building,
727 West Seventh Street,
Los Angeles, California.

Tax Liability for the Taxable Years Ended
December 31 1938,
December 31, 1939
and
December 31, 1940

Income Tax

Year	Liability	Assessed	Deficiency
1938	$61,361.38	$ 43,343.37	$18,018.01
1939	51,012.36	34,650.79	16,361.57
1940	67,366.35	50,026.87	17,339.48
Totals	$179,740.09	$128,021.03	$51,719.06

In making this determination of your income tax liability, careful consideration has been given to the report of examination dated January 30, 1942.

A copy of this letter and statement has been mailed to your representative, Mr. George M. Thompson, 433 South Spring Street, Los Angeles, California, in accordance with the authority contained in the power of attorney executed by you and on file with the Bureau. [11]

ADJUSTMENTS TO NET INCOME

Taxable Year Ended December 31, 1938

Net income as disclosed by return		$114,550.37
Additional income and unallowable deductions:		
(a) Dividends received	$ 126.67	
(b) Net income from rents and royalties	27,687.08	
(c) Contribution disallowed	200.00	
(d) "Other deductions" disallowed	2,165.78	30,179.53
Net income adjusted		$144,729.90

EXPLANATION OF ADJUSTMENTS

(a) The income from dividends is understated in your return $126.67, due to the omission of $2,650.55 received in January of the taxable year and to the erroneous inclusion of $2,523.88 received in January of the succeeding taxable year.

(b) This adjustment is determined as follows:

Additions:		
1. Gross income understated	$ 1,374.32	
2. Depletion based upon share of lessee's net income disallowed	26,462.50	
Total		$27,836.82
Deduction:		
3. Additional depletion on royalties received	149.74	
Net addition		$27,687.08

[12]

1. The gross income from royalties and that represented by your share of your lessee's net income is understated in your return $1,374.32, due to the omission of $11,400.30 received in January of the taxable year and to the erroneous inclusion of $10,025.98 received in January of the succeeding taxable year.

2. The deduction of percentage depletion claimed with respect to gross income represented

by your share of your lessee's net income is not allowable under the provisions of sections 23(m) and 114(b)(3) of the Revenue Act of 1938.

3. Due to the addition under item 1 of gross income from royalties, an additional deduction for percentage depletion is allowed in the amount of $149.74.

(c) The deduction of $200.00 claimed as a contribution, representing payment to State Chamber of Commerce, is not allowable under the provisions of section 23(o) or section 23(a) of the Revenue Act of 1938.

(d) The amount of $2,165.78 claimed as "other deductions" is disallowed since this amount does not represent an ordinary and necessary expense of carrying on a trade or business within the meaning of section 23(a) of the Revenue Act of 1938.

[13]

COMPUTATION OF ALTERNATIVE TAX

Taxable Year Ended December 31, 1938

Net income adjusted		$144,729.90
Plus: Net long-term capital loss		3,862.02
Ordinary net income		$148,591.92
Less: Personal exemption		2,500.00
Balance (surtax net income)		$146,091.92
Less: Interest on U. S. obligations	$ 1,125.00	
Earned income credit	300.00	1,425.00
Net income subject to normal tax		$144,666.92

Normal tax at 4% on $144,666.92		$ 5,786.68
Surtax on	$146,091.92	56,733.31
Partial tax		$ 62,519.99
Minus: 30% of $3,862.02 net long-term capital loss		1,158.61
Alternative tax		$ 61,361.38

[14]

COMPUTATION OF TAX

Taxable Year Ended December 31, 1938

Net income adjusted		$144,729.90
Less: Personal exemption		2,500.00
Balance (surtax net income)		$142,229.90
Less: Interest on U. S. obligations	$ 1,125.00	
Earned income credit	300.00	1,425.00
Net income subject to normal tax		$140,804.90
Normal tax at 4% on $140,804.90	$ 5,632.20	
Surtax on $142,229.90	54,493.34	
Total tax (ordinary)		$ 60,125.54
Alternative tax		$ 61,361.38
Correct income tax liability		$ 61,361.38
Income tax assessed:		
Original, account No. 200657	$ 42,650.08	
Additional, Feb. 1942, account No. 519082	693.29	
Total assessed		43,343.37
Deficiency of income tax		$ 18,018.01

[15]

ADJUSTMENTS TO NET INCOME

Taxable Year Ended December 31, 1939

Net income as disclosed by return		$160,646.72
Additional income and unallowable deductions:		
(a) Dividends received	$ 633.38	
(b) Net income from rents and royalties	24,518.62	
(c) Contribution disallowed	100.00	
(d) "Other deductions" disallowed	2,200.67	27,452.67
Net income adjusted		$128,099.39

EXPLANATION OF ADJUSTMENTS

(a) The income from dividends is understated in your return $633.38 due to the omission of $2,523.88 received in January of the taxable year and to the erroneous inclusion of $1,890.50 received in January of the succeeding taxable year.

(b) This adjustment is determined as follows:

Additions:		
1. Gross income understated	$ 599.96	
2. Depletion based upon share of lessee's net income disallowed	23,921.75	
Total		$24,521.71
Deduction:		
3. Additional depletion on royalties received		3.09
Net addition		$24,518.62

1. The gross income from royalties and that represented by your share of your lessee's net income is understated in your return $599.96, due to omission of $10,025.98 received in January of the taxable year and to the erroneous inclusion of $9,426.02 received in January of the succeeding taxable year. [16]

2. The deduction of percentage depletion claimed with respect to gross income represented by your share of your lessee's net income is not allowable under the provisions of sections 23(m) and 114(b)(3) of the Internal Revenue Code.

3. Due to the addition under item 1 of gross income from royalties, and additional deduction for percentage depletion is allowed in the amount of $3.09

(c) The deduction of $100.00 claimed as a contribution, representing payment to State Chamber of Commerce, is not allowable under the provisions of section 23(o) or section 23(a) of the Internal Revenue Code.

(d) The amount of $2,200.67 claimed as "other deductions" is disallowed since this amount does not represent an ordinary and necessary expense of carrying on a trade or business within the meaning of section 23(a) of the Internal Revenue Code.

COMPUTATION OF ALTERNATIVE TAX

Taxable Year Ended December 31, 1939

Net income adjusted		$128,099.39
Plus: Net long-term capital loss		3,742.95
Ordinary net income		$131,842.34
Less: Personal exemption		2,500.00
Balance (surtax net income)		$129,342.34
Less: Interest on U. S. obligations	$ 1,125.00	
Earned income credit	300.00	1,425.00
Net income subject to normal tax		$127,917.34

Normal tax at 4% on $127,917.34		$ 5,116.69
Surtax on $129,342.34		47,018.56
Partial tax		$ 52,135.25
Minus: 30% of $3,742.95 net long-term capital loss		1,122.89
Alternative tax		$ 51,012.36

[17]

COMPUTATION OF TAX

Taxable Year Ended December 31, 1939

Net income adjusted		$128,099.39
Less: Personal exemption		2,500.00
Balance (surtax net income)		$125,599.39
Less: Interest on U. S. obligations	$ 1,125.00	
Earned income credit	300.00	1,425.00
Net income subject to normal tax		$124,174.39
Normal tax at 4% on $124,174.39	$ 4,966.98	
Surtax on $125,599.39	44,847.65	
Total tax (ordinary)		$ 49,814.63
Alternative tax		$ 51,012.36
Correct income tax liability		$ 51,012.36
Income tax assessed:		
Original, account No. 201449	$33,991.71	
Additional, Feb. 1942, account No. 519083	659.08	
Total assessed		$ 34,650.79
Deficiency of income tax		$ 16,361.57

ADJUSTMENTS TO NET INCOME

Taxable Year Ended December 31, 1940

Net income as disclosed by return		$100,222.61
Additional income and unallowable deductions:		
(a) Dividends received	$ 1,890.50	
(b) Interest received	125.00	
(c) Net income from rents and royalties	30,056.91	
(d) Contribution disallowed	100.00	
(e) "Other deductions" disallowed	2,061.95	34,234.36
Net income adjusted		$134,456.97

[18]

EXPLANATION OF ADJUSTMENTS

(a) The income from dividends is understated in your return $1,890.50 due to the omission of that amount received in January of the taxable year.

(b) The amount of interest reported on Pacific Electric Railway 5% bonds is understated $125.00.

(c) This adjustment is determined as follows:

Additions:		
1. Gross income understated		$ 9,426.02
2. Depletion based upon share of lessee's net income disallowed		21,997.34
Total		$31,423.36
Deduction:		
3. Additional depletion on royalties received		1,366.45
Net addition		$30,056.91

1. The gross income from royalties and that represented by your share of your lessee's net income is understated in your return $9,426.02, due to the omission of that amount received in January of the taxable year.

2. The deduction of percentage depletion claimed with respect to gross income represented by your share of your lessee's net income is not allowable under the provisions of sections 23(m) and 114(b)(3) of the Internal Revenue Code.

3. Due to the addition under item 1 of gross income from royalties, an additional deduction for percentage depletion is allowed in the amount of $1,366.45. [19]

(d) The deduction of $100.00 claimed as a contribution representing payment to State Chamber of Commerce, is not allowable under the provisions of section 23(o) or section 23(a) of the Internal Revenue Code.

(e) The amount of $2,061.95 claimed as "other deductions" is disallowed since this amount does not represent an ordinary and necessary expense of carrying on a trade or business within the meaning of section 23(a) of the Internal Revenue Code.

COMPUTATION OF ALTERNATIVE TAX

Taxable Year Ended December 31, 1940

Net income adjusted		$134,456.97
Plus: Net long-term capital loss		1,218.77
Ordinary net income		$135,675.74
Less: Personal exemption		2,000.00
Balance (surtax net income)		$133,675.74
Less: Interest on U. S. obligations	$ 979.69	
Earned income credit	300.00	1,279.69
Net income subject to normal tax		$132,396.05
Normal tax at 4% on $132,396.05	$ 5,295.84	
Surtax on $133,675.74	56,311.93	
Partial tax		$ 61,607.77
Minus: 30% of $1,218.77 net long-term capital loss		365.63
Alternative tax		$ 61,242.14

[20]

COMPUTATION OF TAX

Taxable Year Ended December 31, 1940

Net income adjusted		$134,456.97
Less: Personal exemption		2,000.00
Balance (surtax net income)		$132,456.97
Less: Interest on U. S. obligations	$ 979.69	
Earned income credit	300.00	1,279.69
Net income subject to normal tax		$131,177.28
Normal tax at 4% on $131,177.28	$ 5,247.09	
Surtax on $132,456.97	55,605.04	
Total tax (ordinary)		$ 60,852.13
Alternative tax		$ 61,242.14
Plus: Defense tax (10% of $61,242.14)		6,124.21
Correct income tax liability		$ 67,366.35
Income tax assessed:		
Original, account No. 202347	$44,030.81	
Additional, Feb. 1942, account No. 519084	5,996.06	
Total assessed		50,026.87
Deficiency of income tax		$ 17,339.48

[Endorsed]: U.S.B.T.A. Filed May 15, 1942.

[21]

[Title of Tax Court and Cause.]

ANSWER

Comes Now the Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition of the above-named taxpayer, admits and denies as follows:

I and II. Admits the allegations contained in paragraphs I and II of the petition.

III. Admits that the taxes in question are alleged deficiencies in income tax for the years 1938, 1939 and 1940, but denies the remainder of paragraph III of the petition.

IV—(a) to (o), inclusive. Denies the allegations of error contained in subdivisions (a) to (o), inclusive, of paragraph IV of the petition.

V—(a) to (q), inclusive. Denies the allegations contained in subdivisions (a) to (q), inclusive, of paragraph V of the petition.

VI. Denies each and every allegation contained in the petition not hereinbefore specifically admitted or denied. [22]

Wherefore, it is prayed that the determination of the Commissioner be approved.

(Signed) J. P. WENCHEL

ACB

Chief Counsel, Bureau of Internal Revenue.

Of Counsel:

ALVA C. BAIRD,
Division Counsel.
FRANK T. HORNER,
SAMUEL TAYLOR,
Special Attorneys, Bureau of Internal Revenue.

[Endorsed]: U.S.B.T.A. Filed June 15, 1942.

[23]

[Title of Tax Court and Cause]

STIPULATION OF FACTS

It is hereby stipulated between the parties hereto, by their respective counsel, that the following facts shall be taken as true in this proceeding without prejudice to the right of either party to offer other and further evidence not inconsistent with the facts herein stipulated:

1. Petitioner is an individual residing at 245 Carolwood Drive, Holmby Hills, Los Angeles, California, with her office at Room 822 Roosevelt Building, 727 West 7th Street, Los Angeles, California.

2. Petitioner duly filed income tax returns for each of the taxable years 1938, 1939 and 1940, with the Collector of Internal Revenue for the Sixth District of California.

3. In the notice of deficiency the Commissioner disallowed the following amounts as deductions in determining [24] the taxable net income:

Year	Amount
1938	$2,165.78
1939	2,200.67
1940	2,061.95

Errors as to such disallowances have been set forth by petitioner in subparagraphs (e), (j) and (o) of paragraph IV of the petition. Said amounts incurred and paid by petitioner in the respective years represented ordinary and necessary expenses for the production or collection of taxable income or for the management, conservation or maintenance of property held for the production of

taxable income and are properly allowable as deductions.

4. Petitioner, one of the heirs of J. V. Vickers, deceased December 28, 1912, owned at all times herein mentioned an undivided one-third interest in and to certain real property situated in the County of Los Angeles, State of California, known as Rancho La Ballona, and more particularly described as that portion of the 417.330195 acre tract of land in the Rancho La Ballona, County of Los Angeles, State of California, allotted to Ramona S. de Machado by the final decree of partition of a portion of said Rancho, had in Case No. 2722, of the District Court, and shown on map recorded in Book 3, page 204, et seq., Miscellaneous Records of said County. [25]

5. On or about April 12, 1924, Petitioner, together with Florence Vickers McAllister and Clara Vickers Naftzger, as Lessors, executed a lease with Standard Oil Company, a California corporation, for the drilling of oil on a portion of the said Rancho La Ballona property referred to in paragraph 4 hereof. A photostat copy of said lease, marked Exhibit 1-A, is attached hereto, incorporated herein by reference, and made a part hereof as though fully set forth herein. Said lease was in full force and effect during the calendar years 1938, 1939 and 1940.

6. On or about January 6, 1925, petitioner, together with Florence Vickers McAllister and Clara Vickers Naftzger, as Lessors, executed a lease with Standard Oil Company, a California coporation, for the drilling of oil on another portion of said

Rancho La Ballona property referred to in paragraph 4 hereof. A photostat copy of said lease, marked Exhibit 2B, is attached hereto, incorporated herein by reference, and made a part hereof as though fully set forth herein. Said lease was in full force and effect during the calendar years 1938, 1939 and 1940.

7. On or about April 18, 1924, petitioner, together with Florence Vickers McAllister and Clara Vickers Naftzger, as [26] Lessors, executed a lease with Associated Oil Company, a California corporation, for the drilling of oil on another portion of said Rancho La Ballona property referred to in paragraph 4 hereof. A photostat copy of said lease, marked Exhibit 3-C, is attached hereto, incorporated herein by reference, and made a part hereof as though fully set forth herein. Said lease was in full force and effect during the calendar years 1938, 1939 and 1940.

8. In the taxable years 1938, 1939 and 1940 petitioner received from Standard Oil Company a California corporation, pursuant to paragraphs 31-A of the Standard Oil Company leases, dated April 12, 1924, and January 6, 1925, set forth in paragraphs 5 and 6 hereof, gross income from primary royalties in aggregate amounts as follows:

Year	Amount
1938	$50,321.41
1939	45,771.09
1940	39,534.63

9. In the taxable years 1938, 1939 and 1940

the petitioner received from Standard Oil Company, a California corporation, pursuant to paragraphs 31-B of the Standard Oil Company leases, dated April 12, 1924, and January 6, 1925, set forth in paragraphs 5 and 6 hereof, aggregate sums of [27] money as follows:

Year	Amount
1938	$62,327.91
1939	52,693.39
1940	44,506.39

10. In the taxable years 1938, 1939 and 1940, petitioner received in cash royalties from Associated Oil Company, a California corporation, pursuant to paragraphs 22 and 25 of the lease dated April 18, 1924, set forth in paragraph 7 hereof, gross income in aggregate amounts as follows:

Year	Amount
1938	$19,700.03
1939	20,275.00
1940	20,958.88

11. In the taxable years 1938, 1939 and 1940, petitioner received from Associated Oil Company, a California corporation, pursuant to paragraphs 23 and 25 of the lease, dated April 18, 1924, set forth in paragraph 7 hereof, aggregate sums of money as follows:

Year	Amount
1938	$34,729.20
1939	34,883.54
1940	39,941.02

12. In determining the proposed deficiencies for the taxable years 1938, 1939 and 1940, the Com-

missioner included in gross income the respective amounts set forth in paragraphs 8, 9, 10 and 11 hereof. [28]

13. In the notice of deficiency for the taxable years 1938, 1939 and 1940, the Commissioner allowed deductions for statutory depletion at the rate of 27½% of the respective amounts received by petitioner as set forth in paragraphs 8 and 10 hereof.

(Sgd.) GEORGE M. THOMPSON
(Sgd.) SIDNEY D. KRYSTAL
Counsel for Petitioner
J. P. WENCHELL, HDT
Chief Counsel, Bureau of Internal Revenue.
Counsel for Respondent.

HDT/mm 8/27/43

[29]

EXHIBIT 1-A

—/—

Agreement
between
Florence Vickers McAllister
Anna Vickers Crawford
Clara Vickers Naftzger
and
Standard Oil Company

Dated: April 12th, 1924. [30]

This Agreement, made this 12th day of April

1924, between Florence Vickers McAllister, formerly Florence Vickers, Anna Vickers Crawford, formerly Anna Vickers, and Clara Vickers Naftzger, formerly Clara Vickers, each the owner, as her separate property, of an undivided one-third (1/3) interest in the land hereinafter described, herein styled first parties, and Standard Oil Company, a corporation under the laws of the State of California, herein styled second party,

WITNESSETH:

Whereas, the first parties are the owners of the following described real property, situate in the County of Los Angeles, State of California, to wit:

That portion of the 417.330195 acre tract of land in the Rancho La Ballona, County of Los Angeles, State of California, allotted to Ramona S. de Machado, by the final decree of partition of a portion of said Rancho, had in Case No. 2722, of the District Court and shown on map recorded in Book 3, Page 204 et seq., Miscellaneous Records of said County, described as follows:

Beginning at the Northeasterly corner of Lot "A" of Tract 3755 as per map recorded in Book 41, Page 58 of Maps in the office of the County Recorder of said County; thence South eighty degrees (80°) forty-five minutes (45') East along the Southerly line of said allotment twenty-six hundred sixty-nine and seventy-eight hundredths (2669.78) feet to the Northeasterly corner of Lot "A" of Tract 1892 as per map recorded in Book 21, Page 139 of Maps in said Recorder's office; thence North forty-five degrees (45°) eleven min-

utes (11′) East two hundred twenty and eighty-eight hundredths (220.88) feet, more or less, to Station No. 2 of the exterior patent boundary of said Rancho La Ballona; thence North twenty degrees (20°) forty-six minutes (46′) West along the Easterly patent boundary of said Rancho La Ballona thirty-seven hundred fifty and seven-hundredths (3750.07) feet, more or less, to the Southeasterly corner of the parcel of land conveyed to Emma S. Cone by deed recorded in Book 1743, Page 121 of Deeds in said Recorder's office; thence South sixty-nine degrees (69°) fourteen minutes (14′) West along the Southerly line of the land so conveyed two hundred (200) feet to the Southwesterly corner thereof; thence North sixty-four degrees (64°) three minutes (03′) West seven hundred eighty-three and twenty-eight hundredths (783.28) feet, more or less, to a point bearing North nine degrees (09°) fifteen minutes (15′) East from the point of beginning; thence South nine degrees (09°) fifteen minutes (15′) West thirty-five hundred fifty and ninety-three hundredths (3550.93) feet, more or less, to the point of beginning, containing one hundred fifty (150) acres, more or less; [31] and

Whereas, the parties hereto desire to enter into an arrangement whereby the second party shall develop and operate the said above described real property for oil, gas, asphaltum and other hydrocarbon substances, in accordance with all of the terms and conditions herein set forth:

Now, Therefore, the parties hereto do hereby mutually covenant and agree, each with the others, as follows:

1. The first parties have granted and do hereby grant unto second party, its successors and assigns, the sole and exclusive right to drill for, produce, extract and take oil, gas, asphaltum and other hydrocarbon substances (and water for operations hereunder) from, and store the same upon, said land during the term hereinafter provided, with the right to enter on said land at all times for said purposes, and from time to time construct, use, maintain, erect, repair, replace and remove thereon and therefrom all buildings, tanks, machinery, telephone and telegraph lines, and other structures, including all pipe lines, which the second party may desire in carrying on its business and mining operations on said premises, with rights of way for passage over and upon and across, and ingress and egress to and from said premises.

2. The second party shall hold said land, with the appurtenances, for the purposes aforesaid, and subject to the terms and conditions of this agreement, for the term of two (2) years from the date hereof, and, unless otherwise surrendered or forfeited by the second party, so long thereafter as the second party in good faith shall conduct drilling operations thereon as herein provided and as long as oil, gas, asphaltum or other hydrocarbons are produced in paying quantities thereon.

3. Concurrently with the execution of this agreement the second party shall pay to the first parties, in consideration of the rights herein granted by first parties to second party, [32] the sum of Seventy-five Thousand Dollars ($75,000.00).

4. The second party agrees to commence the drilling of a well on said premises within two (2) years from the date hereof and to prosecute the same with reasonable diligence until oil is found in quantities deemed paying quantities by the second party, or to a depth at which further drilling would, in the judgment of the second party, be unprofitable, or it may at any time within said period terminate this agreement and surrender the premises to the first parties, as hereinafter provided; provided, however, that if at any time within twenty-one (21) months from the date hereof oil is discovered in quantities deemed paying quantities by the second party herein in any well which it is now drilling or may hereafter drill on that part of the property of the Los Angeles Investment Company described in that certain notice of agreement of lease dated January 15, 1924, from Los Angeles Investment Company to Standard Oil Company, which was recorded January 25, 1924, in Book 2905, Page 195 of Official Records, Los Angeles County, which property is situate to the east and southeast of the herein described premises, the second party agrees, if it has not theretofore commenced the drilling of a well at some place on the herein described premises, or if it has not theretofore canceled or surrendered this agreement, to commence the drilling of a well at some place on the premises herein described within three (3) months after oil in such paying quantities shall be found in said well which it is now drilling or may hereafter drill on said property of the Los Angeles Investment Company hereinabove referred to, or terminate this agreement.

5. If second party shall not have commenced drilling on the herein described premises or terminated this agreement within one (1) year from the date hereof, second party shall pay or tender the first parties as rental, a sum equal to Ten Dollars ($10.00) ~~per acre~~ per month in advance for the thirteenth [33] month of the term of this agreement, and thereafter a sum equal to Ten Dollars ($10.00) per acre per month in advance for each month of the term hereof until drilling is commenced on the herein described premises, or this agreement terminated as herein provided.

6. If the second party shall elect not to commence the drilling of a well on the herein described premises within said period of two (2) years from date hereof, or within three (3) months after the discovery of oil in such paying quantities in any well which second party is now drilling or may hereafter drill on that part of the Los Angeles Investment Company property referred to in Paragraph 4, or shall elect not to prosecute the drilling of such well as above provided, this agreement shall terminate.

7. Upon the termination of this agreement, as herein provided, an appropriate instrument of termination shall be executed and delivered to the first parties, and the second party shall quit the premises and shall thereafter be relieved from all further obligations hereunder. No implied covenants shall be read into this agreement requiring the second party to drill or to continue drilling on said lands, or fixing the measure of diligence therefor.

8. Should the second party elect to commence the drilling of a well on the herein described premises, as aforesaid, if oil should not be obtained in such paying quantities by the second party in the first well drilled, the second party shall, as a condition of the continuation of any of the rights given to it by this agreement, within ninety (90) days after drilling shall have ceased upon such first well, commence upon the premises the drilling of a second well and shall prosecute the drilling of the same with reasonable diligence until oil is found in such paying quan- [34] tities by the second party, or until said well has been drilled to a depth at which further drilling would, in the judgment of the second party, be unprofitable, and shall likewise continue to drill a well under like terms and conditions and subject to like obligations as long as the second party claims any rights hereunder, and until oil in such paying quantities is struck.

9. If oil is found in such paying quantities in any well so drilled by the second party, the second party (subject to the provisions hereof) shall continue to drill additional wells on said premises as rapidly as at least two (2) strings of tools working with due diligence can complete the same, until there shall have been completed on said premises as many wells as shall equal the total acreage divided by ten, whereupon the second party shall hold the entire premises free of further drilling obligations subject to this agreement, and for the full term thereof; provided that the second party

may, if it so elects, defer the commencement of the drilling of the second or any subsequent well for a period not to exceed ninety (90) days from the date of the completion of the well last preceding. The second party shall be entitled to drill on said premises as many additional wells as it desires.

10. After the completion of the first or any subsequent well herein provided for, whether oil be found therein in such paying quantities or not, the second party may, at its election, at any time cease further drilling, and if said full number of wells shall not have been drilled, the second party shall thereupon surrender this agreement, and this agreement shall thereupon terminate as to all of said premises except ten (10) acres surrounding each producing or drilling well, which the second party may hold free of further drilling obligations as long as oil or gas is produced therefrom, with rights of way for pipe lines upon all of said [35] premises and for passage over and upon and across and ingress and egress to and from said premises. Such ten (10) acres shall in each instance be in the form of a square or rectangle, the longer sides of which shall not exceed twice the length of the shorter sides. At the expiration of the term of twenty (20) years from the date hereof, no further well shall be drilled by ~~the second~~ party upon the premises, except with the written consent of the first parties.

11. In the event that wells are drilled and oil produced in paying quantities upon property adjoining the land herein described, and within two

hundred fifty (250) feet of the boundary line of the property herein described, the second party agrees to protect the first parties boundary line by offsetting such wells by the commencement of actual drilling within ninety (90) days after discovery of oil in paying quantities in such wells. Such offset well or wells, if any, to be considered the equivalent in all respects of any other well required to be drilled hereunder.

12. Any gasoline derived from gas produced from the premises shall be returned to the oil produced therefrom and shall be treated as a part thereof.

13. The second party shall not be required to account to the first parties for or pay for any oil, gas or water produced by the second party from the premises and used by it in its operations hereunder, but may use such oil, gas and water free of charge.

14. Water produced by the second party may, if and while the same is not used by it in its operations hereunder, be used by the first parties for surface operations on the premises.

15. In the event gas is produced on the herein described premises in excess of the requirements of the second party for its operations hereunder, and the second party does not sell or otherwise dispose of same, first parties shall have the right to take [36] and use for domestic purposes on the herein described premises, such excess gas, free of cost; provided, however, that such taking of gas shall be at a point designated by second party and at

the sole cost and expense of first parties, and the second party shall not be accountable or answerable for any damage or injury arising out of such taking or use of gas.

16. The second party agrees to operate each completed well on the premises to its full capacity, so long as such well shall produce oil in quantities deemed paying quantities by the second party, while this agreement is in force as to the portion of the premises on which such well is situated. The drilling or pumping obligations of the second party hereunder shall be suspended, while, but only so long as, the second party is prevented from complying therewith, in part or in whole, by strikes, lockouts, acts of God, unavoidable accidents, or other matters beyond the control of the second party, whether similar to the matters herein specifically enumerated or not.

17. The second party shall pay all taxes that may be levied against the improvements, plant, machinery and personal property owned by it and located upon any part of the said premises, including oils and minerals that may be stored on said premises.

18. The second party shall also pay any and all taxes assessed upon the mineral rights in said premises, or on such portion of said premises as the second party is holding under this agreement.

19. The first parties agree to pay all other taxes assessed upon said premises, whether the same are

assessed to the second party or to the first parties, or otherwise.

20. The first parties shall have the right to examine at all times the premises herein described, and the work done, [37] and in progress thereon, and the production therefrom, and shall also have the right to inspect the books kept by the second party in relation to said property, to ascertain the production and the amount shipped therefrom. The second party agrees, on request, to furnish the first parties with copies of logs of all wells drilled by the second party on the land herein described.

21. The second party shall promptly notify the first parties of any judicial proceedings brought to the attention of the second party, and purporting to affect or affecting its possession hereunder.

22. The second party shall have the right to remove from time to time from said premises all machinery, rigs, piping, casing, pumping stations and other property and improvements belonging to or furnished by second party, provided that such removal shall be completed within a reasonable time after the termination of this agreement, and provided further that if at any time during its operations upon the within described premises, any well drilled by second party shall prove to be a non-paying well, or shall prove to be a water well, and the second party shall not desire to further drill or operate said well for the production of oil or gas, or shall cease operation upon said well or wells, second party shall notify first parties of

that fact and shall not remove any casing from said well or wells without first affording the first parties the opportunity of purchasing all or any portion of the casing therein; and if the first parties desire to purchase the same, they shall pay for the casing desired fifty per cent (50%) of the market price of similar casing of like size and gauge obtainable at that time in the Los Angeles market.

23. All the labor to be performed and material to be furnished in the operations hereunder shall be at the cost and [38] expense of the said second party, except in so far as the proceeds of the oil, gas, asphaltum or other hydrocarbon substances produced from the land herein described, shall pay for the same, as provided in this agreement, and the first parties shall not be chargeable with, nor liable for, any part thereof, and during the life of this agreement second party shall keep the lands herein described duly and fully protected against all liens of every character arising from, or connected with, its operations, and in the event of any such liens being placed thereon to the knowledge of second party, it shall at once notify the first parties thereof.

24. Upon the written request of first parties, the second party agrees to lay all pipe lines which it constructs through cultivated fields below plow depth, and upon similar request agrees to fence all sumps dug on the property.

25. The second party agrees to pay all damages directly occasioned by its operations to growing

crops upon said premises. In the event of inability of the parties to agree as to the amount of any such damage, such amount shall be determined by arbitration, one arbitrator to be selected by the first parties, one by the second party, and, if the two so selected shall be unable to agree, they shall select a third arbitrator. The decision of a majority of said three arbitrators shall be binding on the parties.

26. The term "gross proceeds" as used in this agreement, shall mean and include:

(a) The "sale value" as hereinafter defined, of all oil, asphaltum and other hydrocarbon substances other than gas, extracted and saved from said premises by the operations of second party thereon; and

(b) The actual proceeds of all gas produced and saved and sold off the premises by the second party, it [39] being understood and agreed that second party shall be under no obligation to produce, save, sell or otherwise dispose of gas from said premises or any well thereon.

27. The term "sale value" of all oil, asphaltum and other hydrocarbon substances produced from said premises other than gas, shall be defined to mean the value of said products at the current prices paid therefor by second party from time to time to producers of products of like character, gravity and quality in the same vicinity.

28. The term "chargeable expenses" as used in this agreement shall mean and include:

(a) The sum of Seventy-five Thousand Dollars

($75,000.00) (without interest) which under the terms of this agreement second party is required to pay to first parties.

(b) All sums paid to first parties by second party as rental under the provisions of Paragraph Five (5) of this agreement.

(c) The entire cost and expense to the second party of equipping, exploiting, developing and operating said premises, and of producing oil, gas, asphaltum and other hydrocarbon substances thereon and therefrom in accordance with the terms of this agreement, and of delivering said products to stock tanks upon the premises for transportation therefrom.

(d) Such portion of overhead expenses as are paid for field superintendency in connection with the operations under this agreement.

(e) The cost of repairs, replacements and upkeep of all property and improvements upon the said premises belonging to or furnished by second party for use in connection [40] with its operations under this agreement.

(f) All taxes which, under the terms of this agreement, shall be paid by second party.

(g) All sums paid out by second party as compensation for, or in settlement of, any crop damage.

29. The term "net profits" of the operations hereunder as used in this agreement, and as applied at any particular time, shall mean the amount by which the "gross proceeds" derived from the property up to that time shall exceed the "chargeable expenses" paid and incurred up to the same time

in connection with the operations under this agreement.

30. The second party shall keep true and correct books of account showing the production of oil, asphaltum and other hydrocarbon substances from the said premises and the proceeds of all gas produced and saved and sold off the premises during each calendar month, as well as all other data necessary or proper for the stttlement of the accounts between the parties hereto and the proper adjustment of their rights under this agreement. Not later than the last day of the first calendar month following the month in which oil shall be discovered in a well on said premises, in quantities deemed paying quantities by the second party, the second party shall deliver to first parties an itemized written statement showing the production of said premises, and the "gross proceeds" derived from the operations on said premises and all "chargeable expenses" paid and incurred by second party, up to the end of such preceding month; and thereafter, and not later than the end of each calendar month, the second party shall deliver to first parties similar written statements showing the production of said premises, and the "gross proceeds" derived, and the "chargeable expenses" paid and incurred, during the preceding calendar month.

31. At the end of each calendar month commencing with and including the month next succeeding the month in which oil [41] shall be discovered on said premises in such paying quantities by the second party, the second party (at the time of deliver-

ing to first parties the statements hereinabove provided for) shall account to the first parties, and pay to them:

A. As a minimum:

(1) A sum representing the "sale value" as herein defined of the one-fifth (1/5th) part of all oil, asphaltum and other hydrocarbon substances, other than gas, extracted and saved from the said premises during the preceding calendar month.

(2) One-fifth (1/5th) of the actual proceeds of all gas produced and saved and sold off the premises by second party during such preceding calendar month.

B. Such sum, if any, in addition, as shall represent the amount by which one-half (½) of the "net profits" derived from the operations on said property up to the end of such calendar month shall exceed the aggregate of—

(1) All sums theretofore paid to first parties by second party pursuant to the provisions of this paragraph (31), plus

(2) The amount contemporaneously payable by second party to first parties pursuant to the provisions of Subdivision A of this paragraph.

32. The second party shall pay all amount due first parties under this agreement as follows: One-third (1/3) to Florence Vickers McAllister; one-third (1/3) to Anna Vickers Crawford; one-third (1/3) to Clara Vickers Naftzger. Such payments shall be made to the parties at 1001 Story Building, Los Angeles, California, or second party may, at

its option, deposit the same to the credit of the first parties in the Pacific- [42] Southwest Trust and Savings Bank, Sixth and Spring Streets, Los Angeles, California, its successors and any bank or trust company with which it may become merged or which may acquire its banking business.

33. Second party shall not assign this agreement nor sublet the premises (except to the successor or successors, if any, in the business of the second party) without the consent, in writing, of said first parties.

34. If the second party shall fail, for a period of ninety (90) days after written notice given to it at its office in San Francisco, California; by first parties, to comply with any provision of this agreement, the first parties may, at their option, terminate this agreement; provided, that no default in the performance of any of the conditions or provisions hereof as to any well or wells on any parcel of ten (10) acres surrounding the same, as hereinbefore provided, shall affect the right of second party to continue its possession or operation of any other well or wells situated on any other such parcel of ten (10) acres.

In Witness Whereof, the parties hereto have caused this agreement to be executed the day and year first hereinabove written.

FLORENCE VICKERS
McALLISTER
ANNA VICKERS CRAWFORD
CLARA VICKERS NAFTZGER
STANDARD OIL COMPANY
By H. M. STOREY
Vice-President

[Marginal initials]: O. K.—H.H.A.

By S. G. HANSON
Asst. Secretary [43]

State of California
County of Los Angeles—ss.

On this 12th day of April A. D., 1924 before me, Florence E. Lea, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared Florence Vickers McAllister, Anna Vickers Crawford and Clara Vickers Naftzger known to me to be the persons whose names are subscribed to the within Instrument, and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

[Seal] FLORENCE E. LEA
Notary Public in and for said
County and State.

State of California,
City and County of San Francisco—ss.

On this 17th day of April, in the year of our Lord One Thousand Nine Hundred and twenty-four, before me, Frank L. Owen, a Notary Public in and for said City and County and State, residing therein, duly commissioned and sworn, personally appeared H. M. Storey and S. G. Hanson, Vice-president and Assistant Secretary, respectively of Standard Oil Company, the Corporation described in and that executed the within instrument, and also known to me to be the persons who executed it on behalf of the said Corporaton therein named, and they acknowledged to me that such Corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal, at my office in the City and County and State aforesaid the day and year in this certificate first above written.

[Seal] FRANK L. OWEN.
Notary Public in and for said City and County of San Francisco, State of California.

EXHIBIT 2-B

Agreement
between
Florence Vickers McAllister,
et al.,
and
Standard Oil Company

Dated: January 6th, 1925. [44]

This Agreement, dated this 6th day of January, 1925, between Florence Vickers McAllister formerly Florence Vickers, Anna Vickers Crawford, formerly Anna Vickers, and Clara Vickers Naftzger, formerly Clara Vickers, each the owner, as her separate property, of an undivided one-third (1/3) interest in the land hereinafter described, herein styled first parties, and Standard Oil Company, a corporation under the laws of the State of California, herein styled second party.

Witnesseth:

Whereas, the first parties are the owners of the following described real property, situate in the County of Los Angeles, State of California to-wit:

That portion of the 417.330195 Acre tract of land in the Rancho La Ballona, County of Los Angeles, State of California, allotted to Ramona S. de Machado by the final decree of partition of a portion of said Rancho, had in Case No. 2722 of the District Court and shown on Map recorded in Book 3, Page 204, et seq., Miscellaneous Records of said County, described as follows:

Beginning at the Southwesterly corner of the

Exhibit 2-B—(Continued)

parcel of land conveyed to Emma S. Cone by deed recorded in Book 1743, Page 121, of Official Records of said County, thence North sixty-four degrees (64°) three minutes (03') West seven hundred eighty-three and twenty-eight hundredths (783.28) feet, more or less, to a point bearing North nine degrees (9°) fifteen minutes (15') East from the Northeasterly corner of Lot A, of Tract No. 3755, as per map recorded in Book 41, Page 58, of Maps, in the office of the County Recorder of said County; thence South nine degrees (9°) fifteen minutes (15') West one thousand nine hundred forty (1,940) feet to the true point of beginning; thence North eighty degrees (80°) forty-five minutes (45') West two hundred fifty-five (255) feet to a point; thence North thirteen degrees (13°) twelve minutes (12') thirty seconds (30") West two thousand seven hundred seventy-four and thirty-eight hundredths (2,774.38) feet to a point; thence North fifty-eight degrees (58°) thirty minutes (30') West two hundred fifteen (215) feet, more or less, to a point in the Westerly boundary line of said 417.330195 Acre tract, distant thereon South thirty-one degrees (31°) thirty minutes (30') West one thousand seven hundred sixty-five (1,765) feet from the Southwesterly corner of the land conveyed to Harry D. Brown, Jr., by deed dated January 17, 1919, recorded in Book 6795, Page 85, of Deeds; thence South thirty-one degrees (31°) thirty minutes (30') West along said Westerly line one thousand one hundred eighty-three and fifty hundredths (1,183.50) feet,

Exhibit 2-B—(Continued)

more or less, to an angle point therein; [45] thence South fifty-eight degrees (58°) thirty minutes (30′) East two hundred fifteen (215) feet to a point; thence South thirteen degrees (13°) twelve minutes (12′) thirty seconds (30″) East two thousand six hundred twenty-six (2,626) feet to a point; thence South nine degrees (9°) fifteen minutes (15′) West six hundred fifty-two and seventy hundredths (652.70) feet to a point in the Southerly boundary line of said 417.33095 Acre tract; thence South eigthy degrees (80°) forty-five minutes (45′) East along said Southerly line seven hundred fifty-nine and eigthy-two hundredths (759.82) feet to the Northeast corner of Lot A, Tract No. 3755, as per map recorded in Book 41, Page 58, or Maps, in the Office of the County Recorder of said County; thence North nine degrees (9°) fifteen minutes (15′) East one thousand six hundred ten and ninety-three hundredths (1,610.93) feet, more or less, to the true point of beginning, containing eighty (80) acres, more or less;

and

Whereas, the parties hereto desire to enter into an arrangement whereby the second party shall develop and operate the said above described real property for oil, gas, asphaltum and other hydrocarbon substances, in accordance with all of the terms and conditions herein set forth.

Now, Therefore, the parties hereto do hereby

Exhibit 2-B—(Continued)

mutually covenant and agree, each with the others, as follows:

1. The first parties have granted and do hereby grant unto second party, its successors and assigns, the sole and exclusive right to drill for, produce, extract and take oil, gas, asphaltum and other hydrocarbon substances (and water for operations hereunder) from, and store the same upon, said land during the term hereinafter provided, with the right to enter on said land at all times for said purposes, and from time to time construct, use, maintain, erect, repair, replace and remove thereon and therefrom all buildings, tanks, machinery, telephone and telegraph lines, and other structures, including all pipe lines, which the second party may desire in carrying on its business and mining operations on said premises with rights of way for passage over and upon and across, and ingress and egress to and from said premises.

2. The second party shall hold said land, with the appur- [46] tenances, for the purposes aforesaid, and subject to the terms and conditions of this agreement, for the term of five (5) years from the date hereof, and so long thereafter as oil, gas, asphaltum, or other hydrocarbon substances are produced in paying quantities thereon, unless otherwise surrendered or forfeited by the second party.

3. Concurrently with the execution of this agreement the second party shall pay to the first parties in consideration of the rights herein granted by

Exhibit 2-B—(Continued)

first parties to second party, the sum of Eighty Thousand Dollars ($80,000.00).

4. The second party agrees to commence operations for the drilling of a well on said premises within sixty (60) days from the date hereof, and shall prosecute said operations and the drilling of said well with reasonable diligence, until oil is found in quantities deemed paying quantities by the second party, or to a depth at which further drilling would, in the judgment of the second party, be unprofitable.

5. If oil should not be obtained in such paying quantities by the second party in the first well drilled, the second party shall, as a condition of the continuation of any of the rights given to it by this present instrument, within ninety (90) days after drilling shall have ceased upon such first well, commence upon the premises the drilling of a second well and shall prosecute the drilling of the same with reasonable diligence until oil is found in such paying quantities by the second party, or until said well has been drilled to a depth at which further drilling would, in the judgment of second party, be unprofitable, and shall likewise continue to drill a well under like terms and conditions and subject to like obligations as long as second party claims any rights hereunder, and until oil in such paying quantities is struck.

6. If oil is found in such paying quantities in any well [47] so drilled by second party on the premises, the second party (subject to the pro-

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Exhibit 2-B—(Continued)

visions hereof) shall continue to drill additional wells on said premises as rapidly as at least one (1) string of tools, working with due diligence, can complete the same, until there shall have been completed on said premises as many wells as shall equal the total acreage divided by five (5), whereupon the second party shall hold the entire premises free of further drilling obligations, subject to this agreement, and for the full term thereof; provided that the second party may, if it so elects, defer the commencement of the drilling of the second or any subsequent well for a period not to exceed ninety (90) days from the date of the completion of the well last preceding. The second party shall be entitled to drill on said premises as many additional wells as it desires.

7. After the completion of the first or any subsequent well herein provided for, whether oil be found therein in such paying quantities or not, the second party may, at its election, at any time cease further drilling, and if said full number of wells shall not have been drilled, the second party shall thereupon surrender this agreement, and this agreement shall thereupon terminate as to all of said premises except five (5) acres surrounding each producing or drilling well, which the second party may hold free of further drilling obligations as long as oil or gas is produced therefrom, with rights of way for pipe lines upon all of said premises and for passage over and upon and across and ingress and egress to and from said premises.

Exhibit 2-B—(Continued)

Such five (5) acres shall in each instance be in the form of a square or rectangle, the longer sides of which shall not exceed twice the length of the shorter sides.

8. In the event that wells are drilled and oil produced in paying quantities upon property adjoining the land herein de- [48] scribed and within two hundred fifty (250) feet of the boundary line of the property herein described, the second party agrees to protect the first parties' boundary line by offsetting such wells by the commencement of actual drilling within ninety (90) days after discovery of oil in paying quantities in such wells. Such offset well or wells, if any, to be considered the equivalent in all respects of any other well required to be drilled hereunder.

9. Any gasoline derived from gas produced from the premises shall be returned to the oil produced therefrom and shall be treated as a part thereof.

10. The second party shall not be required to account to the first parties for or pay for any oil, gas or water produced by the second party from the premises and used by it in its operations hereunder, but may use such oil, gas and water free of charge.

11. The second party agrees to operate each completed well on the said premises to its full capacity, so long as such well shall produce oil in quantities deemed paying quantities by second

Exhibit 2-B—(Continued)

party, while this agreement is in force as to the portion of the premises on which such well is situated.

12. The drilling or pumping obligations of the second party shall be suspended while, but only so long as, second party is prevented from complying therewith, in part or in whole, by strikes, lockouts, acts of God, unavoidable accidents, or other matters beyond the control of the second party, whether similar to the matters herein specifically enumerated or not.

13. Water produced by the second party may, if and while the same is not used by it in its operations hereunder, be used by the first parties for surface operations on the premises.

14. In the event gas is produced on the herein described premises in excess of the requirements of the second party for its [49] operations hereunder, and the second party does not sell or otherwise dispose of same, first parties shall have the right to take and use for domestic purposes on the herein described premises, such excess gas, free of cost; provided, however, that such taking of gas shall be at a point designated by second party and at the sole cost and expense of first parties, and the second party shall not be accountable or answerable for any damage or injury arising out of such taking or use of gas.

15. The second party shall pay all taxes that may be levied against the improvements, plant, machinery and personal property owned by it and

Exhibit 2-B—(Continued)

located upon any part of the said premises, including oils and minerals that may be stored on said premises.

16. The second party shall also pay any and all taxes assessed upon the mineral rights in said premises, or on such portion of said premises as the second party is holding under this agreement.

17. The first parties agree to pay all other taxes assessed upon said premises, whether the same are assessed to the second party or to the first parties, or otherwise.

18. The first parties shall have the right to examine at all times the premises herein described, and the work done, and the progress thereon, and the production therefrom, and shall also have the right to inspect the books kept by the second party in relation to said property, to ascertain the production and the amount shipped therefrom. The second party agrees, on request, to furnish the first parties with copies of logs of all wells drilled by the second party on the land herein described.

19. The second party shall promptly notify the first parties of any judical proceedings brought to the attention of the second party, and purporting to affect or affecting its possession hereunder.

20. The second party shall have the right to remove from time to time from said premises all machinery, rigs, piping, casing, [50] pumping stations and other property and improvements belonging to or furnished by second party, provided that such removal shall be completed within a reasonable time after the termination of this agree-

Exhibit 2-B—(Continued)

ment, and provided further that if at any time during its operations upon the within described premises, any well drilled by second party shall prove to be a non-paying well, or shall prove to be a water well, and the second party shall not desire to further drill or operate said well for the production of oil or gas, or shall cease operation upon said well or wells, second party shall notify first parties of that fact and shall not remove any casing from said well or wells without first affording the first parties the opportunity of purchasing all or any portion of the casing therein; and if the first parties desire to purchase the same, they shall pay for the casing desired fifty per cent (50%) of the market price of similar casing of like size and gauge obtainable at that time in the Los Angeles market.

21. All the labor to be performed and material to be furnished in the operations hereunder shall be at the cost and expense of the said second party, except in so far as the proceeds of the oil, gas, asphaltum or other hydrocarbon substances produced from the land herein described, shall pay for the same, as provided in this agreement, and the first parties shall not be chargeable with, nor liable for, any part thereof, and during the life of this agreement second party shall keep the lands herein described duly and fully protected against all liens of every character arising from, or connected with, its operations, and in the event of any such liens being placed thereon to the knowledge of second

Exhibit 2-B—(Continued)

party, it shall at once notify the first parties thereof.

22. Upon the written request of first parties, the second party agrees to lay all pipe lines which it constructs through cul- [51] tivated fields below plow depth, and upon similar request agrees to fence all sumps dug on the property.

23. The second party agrees to pay all damages directly occasioned by its operations to growing crops upon said premises. In the event of inability of the parties to agree as to the amount of any such damage, such amount shall be determined by arbitration, one arbitrator to be selected by the first parties, one by the second party, and, if the two so selected shall be unable to agree, they shall select a third arbitrator. The decision of a majority of said three arbitrators shall be binding on the parties.

24. Second party shall not assign this agreement nor sublet the premises (except to the successor or successors, if any, in the business of the second party) without the consent, in writing, of said first parties.

25. If the second party shall fail for a period of ninety (90) days after written notice given to it at its office in San Francisco, California, by first parties, to comply with any provision of this agreement, the first parties may, at their option, terminate this agreement; provided, that no default in the performance of any of the conditions or provisions hereof as to any well or wells on any parcel of five (5) acres surrounding the same, as here-

Exhibit 2-B—(Continued)

inbefore provided, shall affect the right of second party to continue its possession or operation of any other well or wells situated on any other such parcel of five (5) acres.

26. The term "gross proceeds" as used in this agreement shall mean and include:

(a) The "sale value", as hereinafter defined, of all oil, asphaltum and other hydrocarbon substances other than gas extracted and saved from said premises by the operations of second party thereon; and

(b) The actual proceeds of all gas produced and saved and sold off the premises by the second party to itself or [52] otherwise, it being understood and agreed that second party shall be under no obligations to produce, save, sell or otherwise dispose of gas from said premises or any well thereon.

27. The term "sale value" of all oil asphaltum and other hydrocarbon substances produced from said premises other than gas, shall be defined to mean the value of said products at the current prices paid therefor by second party from time to time to producers of products of like character, gravity and quality in the same vicinity.

28. The term "chargeable expenses" as used in this agreement shall mean and include:

(a) The sum of Eighty Thousand Dollars ($80,000.00) (without interest) under the terms of this

Exhibit 2-B—(Continued)

agreement to be paid by second party to first parties.

(b) The entire cost and expense to the second party of equipping, developing and operating said premises, and of producing oil, gas, asphaltum and other hydrocarbon substances thereon and therefrom in accordance with the terms of this agreement, and of delivering said products to stock tanks upon the premises for transportation therefrom.

(c) Such portion of overhead expenses as are paid for field superintendency in connection with the operations under this agreement.

(d) The cost of repairs, replacements and upkeep of all property and improvements upon the said premises belonging to or furnished by second party for use in connection with its operation under this agreement.

(e) All taxes which, under the terms of this agreement, shall be paid by second party. [53]

(f) All sums paid out by second party as compensation for, or in settlement of, any crop or other damage, or any injury cause by, or resulting from, its operations under this agreement.

29. The term "net profits" of the operations hereunder as used in this agreement, and as applied at any particular time, shall mean the amount by which the "gross proceeds" derived from the property up to that time shall exceed the "chargeable expenses" paid and incurred up to the same time in connection with the operations under this agreement.

Exhibit 2-B—(Continued)

30. The second party shall keep true and correct books of account showing the production of oil, asphaltum and other hydracarbon substances from the said premises and the proceeds of all gas produced and saved and sold off the premises during each calendar month, as well as all other data necessary or proper for the settlement of the accounts between the parties hereto and the proper adjustment of their rights under this agreement. Not later than the last day of the first calendar month following the month in which oil shall be discovered in a well on said premises, in quantities deemed paying quantities by the second party, the second party shall deliver to first parties an itemized written statement showing the production of said premises, and the "gross proceeds" derived from the operations on said premises and all "chargeable expenses" paid and incurred by second party, up to the end of such preceding month; and thereafter, and not later than the end of each calendar month, the second party shall deliver to first parties similar written statements showing the production of said premises, and the "gross proceeds" derived, and the "chargeable expenses" paid and incurred, during the preceding calendar month.

31. At the end of each calendar month commencing with and including the month next succeeding the month in which oil shall [54] be discovered on said premises in such paying quantities by the second party, the second party (at the time of delivering to first parties the statements herein-

Exhibit 2-B—(Continued)

above provided for) shall account to first parties, and pay to them:

A. As a minimum:

(1) A sum representing the "sale value" as herein defined of the one-sixth (1/6th) part of all oil, asphaltum and other hydrocarbon substances, other than gas, extracted and saved from the said premises during the preceding calendar month.

(2) One sixth (1/6th) of the actual proceeds of all gas produced and saved and sold off the premises by second party during such preceding calendar month.

B. Such sum, if any, in addition, as shall represent the amount by which one-half (½) of the "net profits" derived from t e operations on said property up to the end of such calendar month shall exceed the aggregate of——

(1) All sums theretofore paid to first parties by second party pursuant to the provisions of this paragraph (31), plus

(2) The amount contemporaneously payable by second party to first parties pursuant to the provisions of Subdivision A of this paragraph.

32. The second party shall pay all amounts due first parties under this agreement as follows: One-third (1/3) to Florence Vickers McAllister; one-third (1/3) to Anna Vickers Crawford; one-third (1/3) to Clara Vickers Naftzger. Such payments shall be made to the parties at 1001 Story Building, Los Angeles, California, or second party may, at its option deposit the same to the credit of

Exhibit 2-B—(Continued)

the first parties in the Pacific-Southwest Trust & Savings Bank, [55] Sixth and Spring Streets, Los Angeles, California, its successors and any bank or trust company with which it may become merged or which may acquire its banking business.

In Witness Whereof, the parties hereto have caused this agreement to be executed.

FLORENCE VICKERS
McALLISTER
ANNA VICKERS CRAWFORD
CLARA VICKERS NAFTZGER
STANDARD OIL COMPANY
By R. J. HANNA
Vice-President
By S. G. HANSON
Asst. Secretary

State of California
County of Los Angeles—ss.

On this 6th day of January, in the year nineteen hundred and twenty-five, A. D., before me, Alice B. Tobey, a Notary Public in and for the said County of Los Angeles, State of California residing therein, duly commissioned and sworn, personally appeared Florence Vickers McAllister; Anna Vickers Crawford and Clara Vickers Naftzger personally known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

Exhibit 2-B—(Continued)

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

ALICE B. TOBEY

Notary Public in and for Los Angeles County, State of California.

My Commission expires March 24th, 1927.

State of California,
City and County of San Francisco—ss.

On this ninth day of January, in the year of our Lord One Thousand Nine Hundred and Twenty-Five, before me, Frank L. Owen, a Notary Public in and for said City and County and State, residing therein, duly commissioned and sworn, personally appeared R. J. Hanna and S. G. Hanson known to me to be the Vice-President and Assistant Secretary, respectively of Standard Oil Company the Corporation described in and that executed the within instrument, and also known to me to be the persons who executed it on behalf of the said Corporation therein named, and they acknowledged to me that such Corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal, at my office in the City and County and State aforesaid the day and year in this certificate first above written.

[Seal] FRANK L. OWEN

Notary Public in and for said City and County of San Francisco, State of California. [56]

EXHIBIT 3-C

This Indenture of Lease, made and entered into this 18th day of April, 1924, between Florence Vickers McAllister, formerly Florence Vickers, Anna Vickers Crawford, formerly Anna Vickers and Clara Vickers Naftzger, formerly Clara Vickers, each the owner as her separate property, of an undivided one-third (1/3) interest in the land hereinafter described, herein called the Lessors, and Associated Oil Company, a corporation duly organized and existing under the laws of the State of California, hereinafter called the Lessee;

Witnesseth:

1. That, Whereas, the said Lessors are the owners of that certain real property situate in the County of Los Angeles, State of California, described as follows, to-wit;

That portion of the 417.330195 acre tract of land, in the Rancho La Ballona, County of Los Angeles, State of California, allotted to Ramona S. de Machado, by the final decree of partition of a portion of said Rancho, had in Case No. 2722, of the District Court and shown on Map recorded in Book 3, Page 204, et seq., Miscellaneous Records of said County, described as follows:

Beginning at a point in the Easterly boundary line of said 417.330195 acre Tract distant therein South Twenty Degrees (20°) forty-six minutes (46') East three hundred thirty-two and eight tenths (332.8) feet from Station 1 thereof; being

Exhibit 3-C—(Continued)

the southeasterly corner of the land conveyed to Harry D. Brown, Jr., by deed dated January 17th, 1919, recorded in Book 6795, Page 85 of Deeds; thence South twenty degrees (20°) forty-six minutes (46') East along said easterly boundary line nineteen hundred Eighty-five and twelve hundredths (1985.12) feet, more or less to the Northeasterly corner of the Parcel of land conveyed to Emma S. Cone by deed recorded in Book 1743, Page 121 of Official Records of said County; thence South sixty-nine degrees (69°) fourteen minutes (14') West along the Northerly line of the land so conveyed to Cone two hundred (200) feet to the Northwesterly corner thereof; thence South twenty degrees (20') forty-six minutes (46') East along the Westerly line of the land so conveyed to Cone Nine hundred forty-one and eight tenths (941.8) feet, more or less to the southwesterly corner thereof; thence North sixty-four degrees (64°) three minutes (03') West seven hundred eighty-three and twenty-eight hundredths (783.28) feet, more or less, to a point bearing North Nine degrees (9°) fifteen minutes (15') East from the Northeastefly corner of Lot "A" of Tract Number thirty-seven hundred fifty-five (3755) as per Map recorded in Book 41, Page 58 of Maps in the Office of the County Recorder of said County; thence South Nine degrees (9°) fifteen minutes (15') West Nineteen hundred forty (1940) feet; thence North Eighty degrees (80°) forty-five minutes (45') West two hundred fifty-five (255) feet; thence North [57] thirteen de-

Exhibit 3-C—(Continued)

grees (13°) twelve minutes (12′) thirty seconds (30″) West twenty-seven hundred seventy-four and thirty-eight hundredths (2774.38) feet; thence North fifty-eight degrees (58°) thirty minutes (30′) West two hundred fifteen (215) feet, more or less, to a point in the Westerly boundary line of said 417.330195 acre Tract distant thereon South thirty-one degrees (31°) thirty minutes (30′) West seventeen hundred sixty-five (1765) feet from the southwesterly corner of the land so conveyed to Harry D. Brown, Jr., thence North thirty-one degrees (31°) thirty minutes (30′) East along said Westerly boundary seventeen hundred sixty-five (1765) feet to the last mentioned southwesterly corner; thence North eighty-six degrees (86°) fifteen minutes (15′) East along the southerly line of the land so conveyed to Brown three hundred twelve and seventy-eight hundredths (312.78) feet, more or less, to the point of beginning; and containing 101 acres, more or less.

2. Now, Therefore, for and in consideration of the rents and royalties hereinafter agreed to be paid by the said Lessee to the Lessors, and the covenants and conditions hereinafter contained on the part of the respective parties hereto to be performed, the Lessors do by these presents lease, let and demise unto the Lessee, and the Lessee does hereby hire and take from the Lessors, all of said real property hereinabove described, subject to the easements granted of record for road purposes, ditch purposes, and for water pipe lines and con-

Exhibit 3-C—(Continued)

duits; for the term of years beginning with the date hereof and ending on the 17th day of April 1944, for the purpose and with the sole and exclusive right to the Lessee of exploiting and drilling for, developing, producing, extracting, bringing to the surface, obtaining, taking, storing, removing and carrying away petroleum, oil, natural, gas naptha, and other mineral oil and hydrocarbon substances in, upon and from said land, and to erect, maintain, construct and operate upon and in said land such structures, appliances, apparatus, equipment and facilities as said Lessee may deem necessary, requisite or desirable to the effectual exercise of all of the rights herein granted, including the right to locate, erect, construct, maintain and operate upon said land such derricks, machinery, tanks, reservoirs, sump holes, pipe lines, roads, telephone lines and structures and facilities of every kind or character that may be necess y, requisite, [58] desirable or auxiliary or incidental to the purposes for which said land is leased to said Lessee; also the right to develop, take and use such water as may be necessary or convenient for the carrying on of said business and operations and for pumping or transporting said substances or any of them from said property elsewhere; provided that, at the expiration of said term, April 17th, 1944, the said right to explore and drill for oil and other hydrocarbon substances shall terminate, but the Lessee may thereafter retain and operate all wells then producing, on the same terms as to royalty and other con-

Exhibit 3-C—(Continued)

ditions as are herein specified, and maintain and use such structures and equipment as may be necessary in the operation of such wells as long as such wells shall continue in use yielding oil or other substances in quantities deemed by the Lessee sufficient to pay to pump or otherwise secure and save; and the Lessors hereby agree that as to any and all land surrendered by the Lessee at the termination of the Lessee's right to explore and drill, that no well shall be drilled upon said surrendered portions of the leased premises within two hundred (200) feet of the boundary line of the land retained or thereafter operated by the Lessee under the terms hereof. No implied covenants shall be read into this lease requiring the Lessee to drill or to continue drilling on said lands, or fixing the measure of diligence therefor.

3. As partial consideration of the rights herein granted to the Lessee, the Lessee agrees to pay to the Lessors, as their interests may appear for the privilege of drilling upon the demised property at the rate of Five Hundred Dollars ($500.00) per acre upon the execution of this lease by the said Lessors, and the Lessors agree to exhibit to the Lessee within ninety (90) days a certificate of title showing their ownership of the demised property free from encumbrances except as hereinbefore described, or if said property is otherwise encumbered, they shall furnish an agreement of the parties holding liens or mortgages thereon, consenting to [59] the making of this lease and subordinating

Exhibit 3-C—(Continued)

their rights to those granted by this lease. The Lessors hereby warrant and each agrees to defend her title to the land herein described.

[Marginal note]: $80,000 for [illegible] this land

4. The Lessee also further agrees in case Lessee shall find oil on the demised premises in quantities deemed by it sufficient to pay to pump or otherwise secure and save, to pay to the Lessors Five Hundred Dollars ($500.00) bonus per acre in oil, the same to be paid monthly at the rate of one-sixth of the value of the net production produced and saved on the demised premises in addition to the one-sixth primary royalty hereinafter provided, until said Five Hundred Dollars ($500.00) per acre in oil shall have been paid, after which only the one-sixth primary royalty shall be paid. Provided further that if the Lessee shall quit-claim the demised premises or surrender or forfeit this lease, or if the wells drilled on said land shall become exhausted, or if the Lessee shall elect not to operate the said wells, before said oil bonus has been fully paid, the Lessee shall not be required to pay, or be liable to the Lessors for all or any portion of said oil bonus then remaining unpaid.

[Marginal note]: no added oil bonus

5. The Lessee agrees to commence the drilling of a well for oil on the demised lands herein described when either of the following conditions shall first exist.

[Marginal note]: 3 strings drill within sixty days

Exhibit 3-C—(Continued)

(a) Within 90 days after oil shall have been produced in paying quantities in any well drilled within three hundred (300) feet of the demised premises, or

(b) Within two years from the date hereof,

6. Whenever the Lessee has commenced the drilling of a well for oil upon the demised premises thereafter the Lessee shall prosecute the drilling of such well with reasonable diligence (strikes, lock-outs, acts of God, unavoidable accidents or other interferences not within the control of the Lessee excepted) until it shall have encountered oil therein in quantities deemed by the Lessee sufficient to pay to pump or otherwise secure and save, or until said well has been drilled to a depth at which it [60] is deemed by the Lessee practical to abandon the well.

7. In the event the Lessee shall drill said first well and shall not find oil therein in quantities deemed by the Lessee sufficient to pay to pump or otherwise secure and save, then, as a condition of the continuance of the rights granted it under this lease, the Lessee will, within ninety (90) days after the abandonment of said first well commence the drilling of a second well and shall prosecute the drilling of said second well with reasonable diligence until oil is found therein in quantities deemed by the Lessee sufficient to pay to pump or otherwise secure and save or until said second well has been drilled to a depth at which it is deemed by the Lessee practical to abandon the well.

8. Should oil not be found in said second well

Exhibit 3-C—(Continued)

in quantities deemed by the Lessee sufficient to pay to pump or otherwise secure and save, the Lessee shall, within ninety (90) days after the abandonment of said second well, as a similar condition of the continuance of the rights hereunder, continue the drilling of additional consecutive wells and shall prosecute the drilling of each consecutive well with reasonable diligence until oil is found therein in quantities deemed by the Lessee sufficient to pay to pump or otherwise secure and save, or until such consecutive well shall have been drilled to a depth at which it is deemed by the Lessee practical to abandon the well.

9. If oil is found in any of such wells in quantities deemed by the Lessee sufficient to pay to pump or otherwise secure and save, the Lessee may retain the drilling rights herein granted if it shall thereafter with due diligence and in good faith continue the drilling of wells upon said leased premises in the manner hereinabove provided, until it has drilled one (1) well for each ten (10) acres of land, or a total of ten wells. For that purpose, the Lessee must keep two strings of tools in operation, except on the last well, until it shall have drilled the [61] property retained by it at the rate of one well for each ten acres of land retained by it, but so long as the Lessee is not in default under the terms hereof, it may drill as many addifional wells on the leased premises retained by it as it may see fit, provided said wells are begun in good faith before the 17th day of April, 1944.

Exhibit 3-C—(Continued)

[Marginal note]: 3 strings.

10. It is expressly understood and agreed, however, between the parties hereto, that the Lessee may at its election at any time after the completion or abandonment of the first well, or any subsequent well or wells, cease further drilling, and whenever during the term of this lease and before all of the wells required hereunder are drilled, the Lessee shall elect that it will not complete the drilling requirements of this lease at the rate of one well to each ten acres of land; then and in that event, within ninety (90) days after Lessee makes such election, the Lessee shall release to the Lessors all such portion or portions of the demised premises except five (5) acres surrounding each producing or drilling well, and the Lessee shall remove from such portion or portions of the demised premises that it has so determined to release, all structures, appliances, apparatus, equipment and facilities which it has placed thereon; reserving however, to the Lessee, the right during the life of this lease, to maintain upon, under and across the land so released, such storage tanks, facilities, pipe lines and conduits as may have been constructed for the storing, handling and transporting of all oil or gas or water, under the terms of this lease, and to maintain over and across the land so released, such electric and telephone lines and roads as may have been constructed for use in connection with operations on the demised premises. The Lessee may hold each of said five acre tracts, so retained by it,

Exhibit 3-C—(Continued)

free of further drilling obligations so long as oil or gas is produced from the well thereon. Each said five acre tract shall be in [62] the form of a square or rectangle, the longer side of which shall not exceed more than twice the length of the shorter side.

11. After having discovered oil in paying quantities at any depth in any well drilled by it, the Lessee may, should it so desire, drill to an additional depth in such well or wells to explore for oil in greater or additional quantities.

12. The Lessee shall also have the right to do such acts and things as may be necessary to keep said wells in the highest productive state, including the right to ream, clean out, deepen, or redrill within a radius of fifty (50) feet of any producing well, in order to maintain or increase the production.

13. The Lessee further agrees that, in the event any wells producing oil in paying quantities shall be brought in during the life of this lease on land adjacent to said premises within one hundred fifty (150) feet of the boundaries of said demised premises, whether by itself or any person or corporation, which adjacent territory shall not be at the time the property of the Lessors, said Lessee in drilling wells under the terms of this agreement, shall attempt to locate wells on the premises of the Lessors in such manner as to best offset wells which may have been brought in on adjacent territory and thereby, as far as possible, prevent the Lessor's

Exhibit 3-C—(Continued)

land from being drained by such operation on such adjacent territory. It is understood, however, that Lessee shall not be required to drill more than (1) well for each ten (10) acres of land of the leased premises retained by it nor to keep more than two (2) strings of tools in operation hereunder after it shall have begun drilling as hereinabove agreed.

[Marginal note]: raise to 4

14. It is expressly understood and agreed between the parties hereto, that, for the purposes of this lease, a well producing oil in paying quantities shall be understood and considered a flowing or pumping well, which if two thousand (2000) feet or shallower in depth, shall produce an average of one hundred [63] (100) barrels per day for thirty (30) consecutive days immediately following completion, and if deeper than two thousand (2000) feet, shall produce an average of 200 (two hundred) barrels per day for thirty (30) consecutive days immediately following completion.

15. If, at any time the price of oil of a gravity of 14° Baume, or of any higher gravity, at 60° Fahrenheit, shall fall below sixty ~~(60)~~ 70 cents a barrel at the wells, Lessee may cease producing (pumping or flowing) oil, or drilling wells, upon said demised premises for and during the time that the said price of oil shall remain below sixty ~~(60)~~ 70 cents a barrel at the wells, and the cessation of such pumping or drilling during such time shall not have the effect

Exhibit 3-C—(Continued)

of terminating this lease, or any of the rights herein granted to the Lessee.

16. The Lessee agrees to keep an accurate log and casing record, showing the progress of drilling and casing in each well in which drilling shall have been done on the demised premises, and to give the Lessors access to such log and casing record at all reasonable times and at such times to permit the Lessors to inspect such log and casing record and to make a copy thereof.

The Lessee further agrees to keep a record of installation of all pipe lines laid by the Lessee on the demised premises showing the location of such pipe lines, and to give the Lessors access to such record at all reasonable times, and at such times to permit the Lessors to inspect such record and make a copy thereof. The Lessee further agrees that the top of all pipe lines laid on any portion of the demised premises shall be not less than eighteen (18) inches below the surface of the ground at all points (when so requested in writing by the owner of the land) and said request may be made at any time.

17. The Lessee also agrees to keep the demised premises and every part thereof free from liens for work or labor done for or materials or supplies furnished to Lessee during its occupancy [64] of the demised premises, or any part thereof, to cause same to be released or discharged of record; provided that, if Lessee shall dispute the justice of any such claim or claims, it shall have the right to defend against the same, and in the event that Lessee

Exhibit 3-C—(Continued)

shall fail or refuse to defend any action brought to enforce any such claim or claims, the Lessors shall have the right to defend against the same and the Lessee shall be liable to the Lessors for all costs, damages and counsel fees reasonably expended by Lessors in defending any such action and for the payment of any final judgment entered against Lessors, and that Lessors shall have the privilege at all times of posting and maintaining upon the property used by the Lessee, notices that the Lessors are not responsible for any debts contracted by the Lessee.

18. The Lessee further agrees to prevent as far as practicable with the exercise of reasonable care and diligence the overflow of oil or water which may be detrimental to vegetable growth upon the portions of the demised premises which are suitable for agricultural or horticultural or any other purpose and to save the Lessors harmless from all damages and claims for damages for preventable injuries to adjacent lands, caused by the overflow of such oil or water.

19. The use by the Lessors of any portion of the demised premises for agricultural or horticultural or other purposes shall however, be at the risk of the Lessors, and the Lessee shall not be liable for any injury to the demised premises or anything grown or growing thereon, except insofar as any such injury shall be proximately caused by the Lessee's failure to exercise reasonable care and diligence hereinabove agreed to be exercised by it. In

Exhibit 3-C—(Continued)

the event of inability of the parties to agree as to the amount of any such damage, such amount shall be determined by arbitration, one arbitrator to be selected by the Lessors, one by the Lessee, and, if the two so selected shall [65] be unable to agree, they shall select a third arbitrator. The decision of a majority of said three arbitrators shall be binding on the parties.

20. In the event that the Lessee shall develop water on the demised premises in excess of the quantity which the Lessee may deem necessary for its use, the Lessors shall have the right to use any such excess water for irrigation purposes upon any portion of the demised premises which may be put to agricultural or horticultural uses hereunder; provided, however that the Lessors shall bear and pay all costs and expenses incident to the diversion of such excess water for irrigation purposes, and that Lessors shall use excess water entirely at their own risk and that such excess water shall be so diverted and used as not to interfere with or interrupt the operations of the Lessee on the demised premises.

21. All of said hydrocarbon substances shall be collected in tanks, reservoirs, or sumps upon the demised premises or upon property convenient thereto, which tanks, reservoirs and sumps shall be built and maintained at the expense of the Lessee. Nothing herein contained shall require the Lessee to segregate or keep separate the various grades of oil produced upon the demised premises, nor shall

Exhibit 3-C—(Continued).

the Lessee be required to keep separately the production of any well or group of wells. The oil so produced and saved from the different wells may be commingled, and after such commingling, shall represent the character of oil produced upon the demised premises. The Lessee shall account and settle therefor, both as to quantity and quality, as measured and determined at its shipping tanks on the demised premises.

22. As a further consideration of this agreement, the Lessee agrees to pay to the Lessors a primary royalty of one-sixth (one-sixth) of the net amount of all petroleum, oil, naptha and other hydrocarbon substances which may be produced and saved [66] from the demised premises, after deducting from the gross product the quantity that may be consumed in the development and operation of said property while any of said substances are being produced from said premises and in pumping or transporting any of said products from said property elsewhere. The Lessee shall also pay one-sixth (1/6th) of the proceeds from the sale of all gas produced and sold on the demised premises to the Lessors; the payment of said one-sixth (1/6th) of said proceeds to be made on the twentieth (20th) day of each calendar month out of the proceeds realized from the sale of gas during the last preceding calendar month.

The Lessee shall have the right to contract for the manufacture of casing-head gasoline from gas produced on the demised premises provided that

Exhibit 3-C—(Continued)

said contract shall not allow more than sixty-five (65%) percent to the party manufacturing said gasoline and shall reserve not less than thirty-five (35%) percent of said gasoline to be divided between the parties hereto on the basis of one-sixth (1/6th) to the Lessors and five-sixths (5/6ths) to the Lessee.

23. The Lessors reserve, and the Lessee agrees to render and pay unto the Lessors, an additional or secondary royalty which shall become payable and shall be ascertainable as follows: [67]

An accurate account shall be kept by the Lessee of the expenses of its development work and other operations upon said land from the time of the commencement of such work. Said account shall include, but not be limited by the following items:

(a) The sum of $50,500.00 which the Lessee has paid the Lessors as a cash bonus for the execution of this lease.

[Marginal note]: 130500

(b) The sum of $50,500.00 which the Lessee herein agrees to pay as oil bonus to the Lessors. Said sum shall be entered in this account when and as the oil bonus is paid to the Lessors.

[Marginal note]: same

(c) The primary royalty provided to be paid to the Lessors under the terms of this lease, and any other royalties, rents or sums to be paid under said lease or any modification thereof, which may be made between the parties hereto.

Exhibit 3-C—(Continued)

(d) Sums sufficient to meet all state and county taxes upon the said premises or the mineral rights therein, other than those borne by the Lessors under the terms of this lease; assessments for the oil production fund of the State Oil and Gas Supervisor; and any other assessment, tax or levy, other than those provided to be borne by the Lessors, which may be required to be paid by the Lessee on the oil produced and its products; or on the demised premises; or on the equipment used in operating said premises; or as a result of the operations of the Lessee under the terms of this lease.

(e) Any rentals that may be paid to the Lessors. Payments made or to be made for all damages resulting from the operations of the Lessee on the demised premises. Any other payments of any kind whatsoever made or to be made by the Lessee in connection with operations upon said lands, and/or under the terms of this lease or any modifications thereof.

(f) The cost to the Lessee of all expenditures made for developing and operating said premises, and the cost to the Lessee of equipment purchased to be installed for use on said premises in [68] operating the same, together with overhead expenses and expenses for the use of facilities and any other expenditures determined in the manner hereinafter described for current overhead; for use of facilities in current operations and for any other expenditures. Current operating cost of operating said wells, including the cost of producing all royalty products.

Exhibit 3-C—(Continued)

(g) Such pro-rata share of Lessee's current overhead as shall be arrived at by pro-rating each month the total overhead expenses of the Lessee on the same basis on which the Lessee apportions overhead through its regular accounting system, to all leases operated by it.

(h) A fair and equitable proportional charge for the use of facilities used by the Lessee on or in connection with its operations on said premises, jointly with its operations on other land, either leased or owned by the Lessee.

(i) Any expenditures made or obligations incurred for insurance or matters of like character.

(j) Any other expenses incurred or expenditures made in good faith in connection with or arising out of the development work and operations of the Lessee.

All charges determined in the foregoing manner shall be known as "Operating Charges."

The Lessee shall also keep an accurate account of all oil produced and saved on the demised premises, as determined at its shipping tanks as herein provided, the value of material removed from the demised premises and all other revenue derived from its operations on the demised premises. The value of the oil shall be determined at the prevailing market price as herein provided. The value of the gasoline shall be determined at the contract price at which gasoline produced on the demised premises is sold by the party making said gasoline. The

Exhibit 3-C—(Continued)

foregoing items shall be known as "Income Credits." [69]

Material, supplies and equipment that may be furnished by the Lessee itself for use on the demised premises shall be charged at landed cost except that second-hand or used material shall be charged at its depreciated value arrived at by using the Lessee's established method and rate of depreciation for like materials as shown in its regular accounts. In case such depreciated value is not ascertainable as to any article or articles the fair and reasonable value shall be charged. Upon the subsequent removal or disposition of any such supplies, materials, or equipment, the depreciated value thereof at the time of such removal or disposal determined in the same manner shall be credited and treated as part of the "Income Credits".

When, and as soon as the "Income Credits" of said account shall exceed the "Operating Charges" of the Lessee, the Lessor shall be entitled to a secondary and additional royalty, the amount thereof to be one-half of such difference between the "Operating Charges and "Income Credits" of said account.

24. Said primary royalty shall always be paid unto the Lessors, and payment of said secondary royalty, computed as aforesaid, in addition thereto, shall be made each month, when such account shows a profit or surplus.

25. The Lessors agree to sell unto the Lessee, and the Lessee agrees to purchase from the Lessors,

Exhibit 3-C—(Continued)

all primary and secondary royalty at the prevailing market price thereof, in the oil field in which the demised land is situated.

Each one-third unit of the rents and royalty payable under this lease or any modification thereof to each one of the Lessors, as provided in Paragraph 28, shall always be treated as a single unit and if the Lessors shall sell or otherwise dispose of any interest, in whole or in part, of said royalty unit, or if the same shall become the property of others then the said Lessor, said one-third unit of the royalty shall always be treated as a single unit and pay- [70] ment therefor shall be made by the Lessee as a single unit to the Lessor or to an agent designated by her.

26. The prevailing market price hereinabove referred to shall be the market price at the well prevailing from time to time when the royalty oil would be deliverable hereunder if some were not purchased by the Lessee, for oil produced in the oil field, in which the demised premises are situated, of similar gravity or gravities as that produced from the demised premises, provided that whenever such market price shall vary during any calendar month, then the price to be paid for the royalty oil purchased by the Lessee during such month shall be based on the average daily quantity purchased by the Lessee during such month; that is to say, payment for royalty oil purchased during such month shall be at the respective prices, effective during such month for such proportion of the total amount

Exhibit 3-C—(Continued)

of royalty oil purchased by the Lessee during such month as the number of days such price remains effective during such month bears to the total number of days in such month.

27. The Lessee agrees that it will, on or before the 20th day of each calendar month, furnish to the Lessors, a true account of the production of all substances herein named from the demised premises during the next preceding calendar month, except such portion thereof as may be used in the development and operation of the property under the terms of this lease.

As soon as the operations of the Lessee upon the demised premises shall show a surplus in the account provided for in paragraph 23, the Lessee shall render on the 20th day of each and every calendar month to the Lessors, a statement showing the "Operating Charges" and "Income Credits" in connection with the demised premises for the preceding period or calendar month, which statement shall be in the same form as that prepared by the Lessee for its own use.

28. The Lessee agrees to make payment to the Lessors [71] on the 20th day of each calendar month for all royalties due the Lessors during the preceding calendar month. The Lessee shall pay all amounts due first parties under this agreement as follows: One-third (1/3d) to Florence Vickers McAllister; one-third (1/3d) to Anna Vickers Crawford; one-third (1/3d) to Clara Vickers Naftzger.

Exhibit 3-C—(Continued)

Such payments shall be made to the parties at 1001 Story Building, Los Angeles, California, or second party may, at its option, deposit the same to the credit of the first parties in the Pacific Southwest Trust & Savings Bank, Sixth and Spring Streets, Los Angeles, California, its successors and any bank or trust company with which it may become merged or which may acquire its banking business. If said Bank shall at any time refuse to receive said payments for the Lessors and the Lessors shall fail to select another Bank within fifteen days of said refusal by said Bank, then the Lessee shall have the right to designate any Bank to receive said payments for said Lessors. The Lessee shall thereupon notify the Lessors of the designation of said Bank and said Bank shall so continue to receive said payments for the Lessors until the Lessors shall select another Bank as herein provided.

29. The Lessors shall have the right, if they so desire to inspect Lessee's records at any time during business hours for the purpose of verifying such accounts and the right to measure and gauge the quantity of any and all of said substances produced on said premises, such right to be exercised during business hours only.

30. The Lessee agrees to occupy no more land than is reasonably required for the drilling of wells and for the operation of any and all wells drilled hereunder, and for such structures, appliances, appurtenances, equipment and facilities as may [72] be necessary or desirable for the effectual exercise

Exhibit 3-C—(Continued)

of the rights herein granted to Lessee, but it is understood that this provision shall not operate as a limitation upon the number of wells which may be drilled by the Lessee or so as to interfere in any manner with the effectual exercise by the Lessee of all the rights granted to it hereunder.

31. Should any well be drilled and no oil be produced therefrom, or when a producing well becomes non-productive, the Lessee shall have the right to abandon such well and to remove all casing therein, but shall restore the ground to a safe condition by leveling to its original contour as near as practicable.

32. If the Lessee shall drill any well upon the demised premises which shall prove to be a water well and not an oil well and the Lessee shall desire to abandon such well as an oil well and the owner of said parcel of land on which such well is located shall desire to acquire the same as a water well, such owner shall pay to the Lessee the market price of the casing in said water well prevailing at the time of purchase thereof by such owner, and if the owner shall not desire to acquire such water well and purchase such casing, the Lessee shall have the right to pull and remove the casing therefrom. And whenever the Lessee shall desire to abandon a water well, it shall notify the owner of the parcel of land upon which said well is located, in writing, of its desire so to do, and if the owner of such land shall fail, within twenty (20) days after the receipt of such notice, to elect to retain said well and pay for the

Exhibit 3-C—(Continued)

casing therein the Lessee shall be at liberty to pull and remove said casing from such well at any time after the expiration of said twenty (20) days.

33. The Lessee will comply with all laws of the State of California in its operations under this lease.

34. For the purpose of this lease, no structure, appliances, apparatus, equipment or facility placed by Lessee upon [73] or in the demised premises shall be deemed to be a fixture, but all thereof shall belong to the Lessee subject to the provisions relative secondary royalty as herein provided and the Lessee shall have the right at any time prior to the expiration of ninety (90) days after the termination of this lease, to remove from the demised premises all structures, appliances, apparatus, equipment, facilities and materials, including casing in all wells.

35. The Lessee shall pay, before same become delinquent all taxes that may be levied against its improvements, machinery, and personal property on the demised premises, including any oil and minerals belonging to the Lessee that may be stored on said premises, and if the assessed valuation of the said demised premises shall be increased over and above the amount at which said premises were assessed for the present fiscal year (1924-1925) and such increase shall be due to the operations of the Lessee on said premises and/or the minerals or mineral rights of said premises. Lessee shall pay five-

Exhibit 3-C—(Continued)

sixths (5/6ths) of the taxes upon such increase or if the minerals and mineral rights shall be separately assessed either to the Lessee or the Lessors, the Lessee shall pay five-sixths (5/6ths) of all taxes assessed against said minerals and mineral rights. Subject to the foregoing provisions, the Lessors agree to pay all taxes assessed against said premises, including one-sixth (1/6th) of the taxes due to the operations of the Lessee on said premises, or minerals or mineral rights therein, whether the same are shown in an increase in the valuation of the property or the minerals and mineral rights are separately assessed.

The Lessee in every event is hereby authorized to pay the one-sixth (1/6th) of the taxes which the said Lessors do herein agree to pay, and in such event the said Lessee may deduct the same amount paid as taxes for the Lessors from the royalties which shall become due or owing the Lessors hereunder. Either [74] party may pay the entire amount of any tax which shall constitute a lien against the demised premises and shall be entitled to reimbursement from the other party of the part thereof herein agreed to be paid by such party with interest thereon at the rate of six (6%) percent per annum from and after the date upon which demand for such reimbursement shall have been made until paid.

36. The Lessee shall have and reserves the right at any time to surrender this lease and all or any portion of the leased premises and by such surren-

Exhibit 3-C—(Continued)

der and the execution of a quit-claim deed, the Lessee shall be released from all further drilling obligations as to such surrendered land. The Lessee may elect to stop further drilling at any time. In the event the Lessee elects to stop further drilling before a producing well is completed on the demised premises, then within ninety (90) days thereafter, the Lessee shall release, quitclaim and surrender to the Lessor all of its right, title and interest in and to the demised premises, subject to such reservations and in the manner herein provided.

37. Upon the termination of all of the Lessee's rights under this lease, the title to all unsevered petroleum, oil, natural gas, and other hydrocarbon substances lying in and under the demised premises shall revert to the respective owners thereof, and the Lessee agrees thereupon and upon demand of such owners to execute and deliver to the said owners an instrument quitclaiming to the said owners all interest of the Lessee in the demised premises so as to effectually clear the title of said premises from any interest of the Lessee under this lease.

Upon the expiration, forfeiture or termination from any cause of this lease, as to the said demised premises, or any portion thereof, the Lessee shall be under the obligation promptly to execute and deliver to the Lessors a good and sufficient quitclaim deed or other instrument in proper form to be recorded and clear the record title of said premises, or the portion thereof as to [75] which the lease has

Exhibit 3-C—(Continued)

terminated, of the cloud created thereon by the recording of this lease, or of any notice thereof.

38. Should any dispute arise between the parties hereto concerning the interpretation of any term used herein or the effect or meaning of any of the provisions hereof, or as to any matter of fact affecting the rights of the parties hereto, such dispute shall be submitted to and decided by three arbitrators, one to be appointed by the Lessee, one by a majority in area of the Lessors, and a third by the two so appointed, and the decision of a majority of such Board shall be binding upon the parties hereto.

39. If the Lessee shall fail, for a period of ninety (90) days after written notice is given to it by the Lessors to comply with any provision of this lease, the majority in area of the Lessors may, at their option, terminate this lease, or the owner of any tract of land, may terminate this lease as to said tract, provided that no failure on the part of the Lessee to comply with any of the provisions of this lease as to any well or wells on any parcel of five (5) acres surrounding same shall affect the rights of the Lessee to continue its possession or operation of any other well or wells situated on any other five (5) acre parcel or parcels.

40. Failure on the part of the Lessee to comply with any provision or condition of this agreement by reason of accident or delay caused by fire, the elements, act of God, strikes, lockouts, war, insurrection, rebellion, or by interruption of transportation

Exhibit 3-C—(Continued)

facilities or by Governmental action or by any cause beyond the control of the Lessee, whether similar to the causes herein specified or not, shall not be deemed as a failure by Lessee to comply with any provision of this lease, or a violation of any of the provisions in this lease contained. [76]

41. All the terms and conditions hereof shall bind and benefit the heirs, executors, administrators, successors and assigns of the respective parties hereto and an acceptance of any interest in this lease by any person shall be construed as a promise on his part to be bound by and perform all the covenants herein contained and entered into by the person or persons whose rights he has acquired.

42. Upon the making of any assignments of this lease or of any interest therein, a copy of such assignment and of any contract relating to the same shall be delivered to the Lessee and no such assignment shall be effective unless the said copy is so delivered to and filed with the said Lessee.

43. The Lessee is further granted the right to use and enjoy the necessary rights of way for ingress and egress into, upon, and across that certain real property, situate in the County of Los Angeles, described as follows:

The 417.330195 acre tract of land in the Rancho La Ballona, County of Los Angeles, State of California, allotted to Ramona S. de Machado, by the final decree of partition of a portion of said Rancho had in Case No. 2722, of the District Court and

Exhibit 3-C—(Continued)

shown on Map recorded in Book 3, Page 204, et seq., Miscellaneous Records of said County, described as follows, to-wit:

Commencing at Station 1 of the Patent Survey of said Rancho, thence South Twenty and one-half Degrees East (S 20½° E) One Hundred and Seven and Seventy-nine hundredths (107.79) chains to Station 2, thence South Forty-Eight and one-half Degrees West (S 48½° W) Three and Five Hundredths (3.05) chains; thence North Eighty and Three-fourths Degrees West (N 80¾° W) Seventy-nine and Thirty-eight Hundredths (79.38) chains to the Easterly line of Flower Street, thence along said Easterly line, North ten and one-half Degrees West (N 10½° W) one and Three Hundredths (1.03) chains; thence North Twenty-one Degrees East (N 21° E) Forty-seven and Forty-six Hundredths (47.46) chains, thence North Thirty-one and one-half degrees East (N 31½° E) fifty and Fifty hundredths (50.50) chains to point of beginning; Excepting therefrom the land described as follows, to-wit:

Commencing at Station 1 of said Four Hundred and Seventeen and Thirty-three Hundredths (417.33) acre Tract, thence along the Easterly boundary line of said above mentioned tract, a distance of Three Hundred and Thirty-two and Eighty Hundredths (332.80) feet to a point in said Easterly boundary line, a stake; thence [77] South Eighty-six Degrees, Fifteen Minutes (S 86° 15'W) Three hundred and Twelve and Seventy-eight Hundredths

Exhibit 3-C—(Continued)

(312.78) feet to the Westerly boundary line of said Four Hundred Seventeen and Thirty-three Hundredths (417.33) acre tract; thence along the Westerly boundary line of said Tract Three Hundred Eighty-four and Fifty Hundredths (384.50) feet to the place of beginning, being One and Fourteen Hundredths (1.14) acres more or less, conveyed to Harry D. Brown, Jr., by deed dated January 17th, 1919, recorded in Book 6795, Page 85 of Deeds.

Beginning at the intersection of the North line of Lot Nineteen (19) of that subdivision of the Southern portion of the Rancho Rincon de Los Bueyes, recorded in Book 53, Page 25 of Miscellaneous Records of the County of Los Angeles, California, with the East line of that certain Four Hundred Seventeen and Thirty-three Hundredths (417.33) acre tract of land in the Rancho La Ballona, County of Los Angeles, State of California, allotted to Ramon S de Machado by the Final Decree of Partition of a portion of said Rancho had in the Case No. 2722, of the District Court and shown on Map recorded in Book 3, Page 204, Miscellaneous Records of said County; thence running South Twenty Degrees, Thirty Minutes (20° 30') East a distance of Nine Hundred Forty-one and Eight tenths (941.8) feet to a point; thence South Sixty-nine Degrees, Thirty minutes (69°30') West for distance of Two Hundred (200) feet to a point; thence North Twenty Degrees, Thirty Minutes (20°30') west to a distance of Nine Hundred Forty-one and Eight Tenths (941.8) feet to a point,

Exhibit 3-C—(Continued)

thence North Sixty-nine Degrees, Thirty Minutes (69°30′) East a distance of Two Hundred (200) feet to the place of beginning, containing Four and Three Hundred Twenty-four Thousandths (4.324) acres, more or less, conveyed to Charles W. Rand, by deed dated January 21st, 1918, recorded in Book 6606, Page 342 of Deeds.

together with the right to construct, maintain, use and enjoy pipe lines, power and light lines and roads, constructed by it, and roads that are now, or may hereafter be built on the lands described in this section, provided however, that the rights of way herein granted shall be subject and subordinate to, and shall not interfere with the rights which the Lessors have granted or may grant in any lease for oil development purposes. If the Lessee herein shall use any road constructed by others, it shall pay a proportionate and equitable share of the cost of maintaining said road, and in a like manner, if the Lessee herein shall construct any road, and the Lessors shall grant the right to use said road to other parties, the grantee [78] of such rights shall pay the Lessee herein a proportionate and equitable part of the cost of maintaining said road. All roads shall adapt themselves so far as practicable to the present and subsequent uses of the land by the owner. For example, if any of the land shall be surrendered and subsequently subdivided, the company shall use any roads or streets made in such subdivision for such uses as practicable, and any road used by the company shall be located where

Exhibit 3-C—(Continued)

they shall be least detrimental to the use of said leased lands permitted to the owner consistent with the purposes for which this lease is given. Rights granted under this paragraph are subject to the remaining terms of this lesse.

44. In Witness Whereof, the individual Lessors have hereunto affixed their hands and the Lessee has caused these presents to be executed by its proper officers thereunto duly authorized and its corporate seal to be hereunto affixed the day and year first above written.

FLORENCE VICKERS McALLISTER
ANNA VICKERS CRAWFORD
CLARA VICKERS NAFTZGER

Lessee—
ASSOCIATED OIL COMPANY
[Seal] By A. C. McLAUGHLIN
Vice President
By J. P. EDWARDS
Asst. Secretary

State of California
County of Los Angeles—ss.

On this 22nd day of April, in the year nineteen hundred and Twenty-four A. D., before me, Florence E. Lea, a Notary Public in and for the said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared Florence Vickers McAllister, Anna

Exhibit 3-C—(Continued)

Vickers Crawford and Clara Vickers Naftzger, personally known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal in said County the day and year in this certificate first above written.

[Seal] FLORENCE E. LEA

Notary Public in and for Los Angeles County, State of California [79]

The undersigned Frank A. McAllister, husband of Florence Vickers McAllister, one of the Lessors named in the foregoing instrument, hereby declares that the real property the subject thereof is the separate property of said Florence Vickers McAllister, and he assents to the lease evidenced by such instrument.

Dated April 25th, 1924.

FRANK A. McALLISTER

State of California

County of Los Angeles—ss.

On this 25th day of April, in the year nineteen hundred and twenty four, A. D., before me, W. S. Ackerman, a Notary Public in and for the said County of Los Angeles, State of California residing therein, duly commissioned and sworn, personally appeared Frank A. McAllister personally known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

Exhibit 3-C—(Continued)

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] W. S. ACKERMAN
Notary Public in and for Los Angeles County, State of California

The undersigned Clarence H. Crawford, husband of Anna Vickers Crawford, one of the Lessors named in the foregoing instrument, hereby declares that the real property the subject thereof is the separate property of said Anna Vickers Crawford, and he assents to the lease evidenced by such instrument.

Dated April 22, 1924.

CLARENCE H. CRAWFORD

The undersigned Roy E. Naftzger, husband of Clara Vickers Naftzger, one of the Lessors named in the foregoing instrument, hereby declares that the real property the subject thereof is the separate property of said Clara Vickers Naftzger, and he assents to the lease evidenced by such instrument.

Dated April 22, 1924.

ROY E. NAFTZGER

State of California
County of Los Angeles—ss.

On this 22nd day of April, in the year nineteen hundred and Twenty-four A. D., before me, Florence E. Lea, a Notary Public in and for the said County of Los Angeles, State of California, resid-

Exhibit 3-C—(Continued)

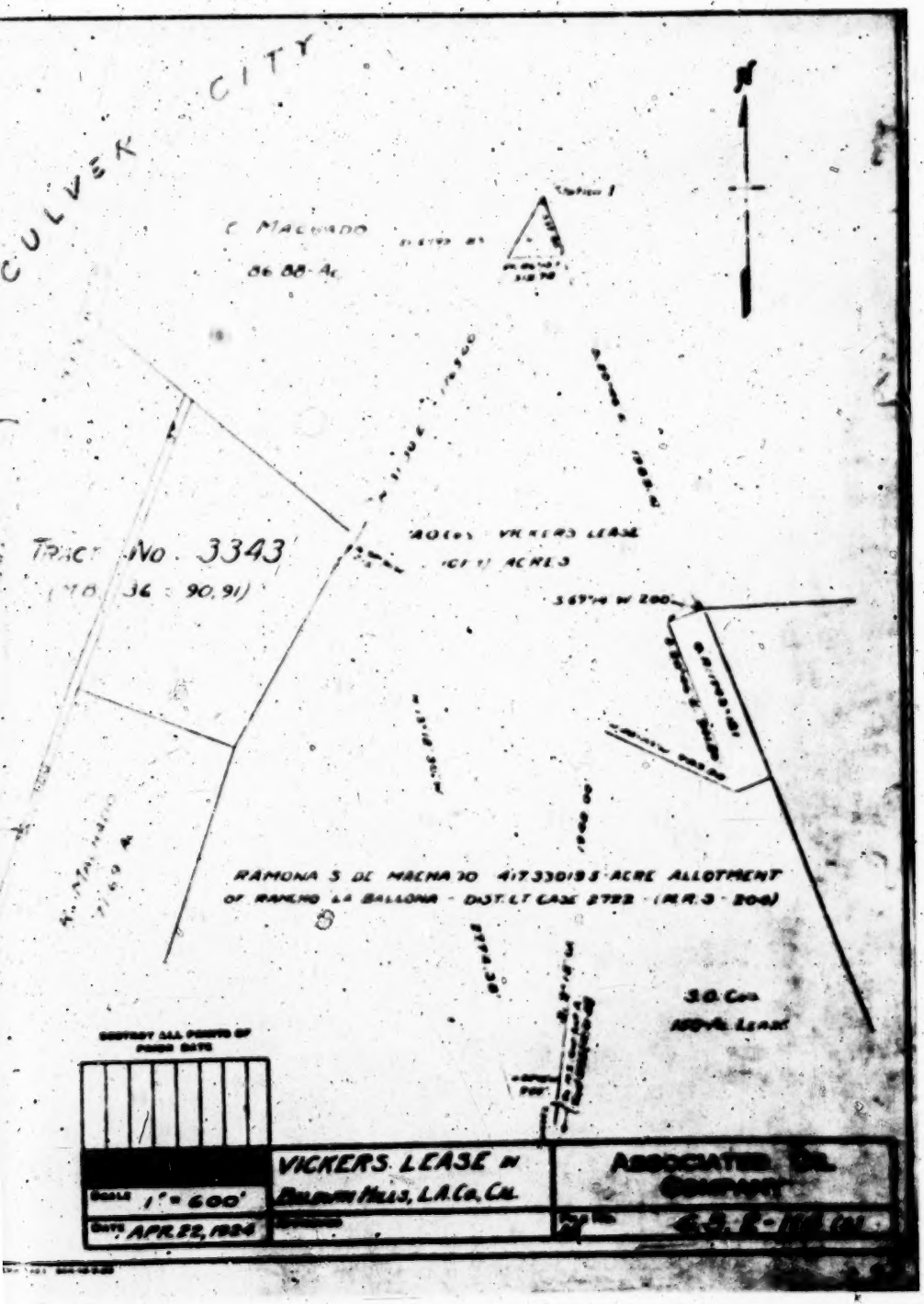
ing therein, duly commissioned and sworn personally appeared Clarence H. Crawford and Roy E. Naftzger, personally known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal in said County the day and year in this certificate first above written.

[Seal] FLORENCE E. LEA,
Notary Public in and for Los Angeles County, State of California.

[Endorsed]: U.S.B.T.A. Filed Sept. 20, 1943.

[80]


CULVER CITY
C. MACHADO
86.88 AC.
TRACT NO. 3343
(M.B. 36 - 90, 91)
ADLER VICKERS LEASE
61.1 ACRES
RAMONA S DE MACHADO 417330195 ACRE ALLOTMENT
OF RANCHO LA BALLONA - DIST. LT CASE 2782 - (R.R. 3 - 206)
S.P. Co.
100 Yr. Lease
VICKERS LEASE IN
Ballona Hills, L.A. Co. Cal.
ASSOCIATED OIL COMPANY
SCALE 1" = 600'
DATE APR. 22, 1924

The Tax Court of the United States

Docket No. 111947

ANNA VICKERS CRAWFORD,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Sidney D. Krystal, Esq.,
for the petitioner.

Harold D. Thomas, Esq.,
for the respondent.

MEMORANDUM OPINION

Arnold, Judge: This proceeding involves income tax deficiencies for 1938, 1939 and 1940, in the respective amounts of $18,018.01, $16,361.57 and $17,339.48. All issues have been settled by agreement of the parties except one common to each of the taxable years, namely, whether petitioner is entitled to percentage depletion on alleged oil royalties of $26,462.50, $23,921.75 and $21,997.34 for the years 1938, 1939 and 1940, respectively.

The stipulated facts are adopted as our findings of fact. Only such facts as are necessary for an understanding of the issue will be hereinafter set forth. [82]

Petitioner is an individual residing in Los Angeles, California. Her income tax returns for each of the taxable years were filed with the collector of internal revenue for the sixth district of California.

At all times herein mentioned petitioner owned an undivided one-third interest in and to certain property situated in the County of Los Angeles, California, known as Rancho La Ballona, a tract of land of 417.330195 acres. On or about April 12, 1924, petitioner, together with Florence Vickers McAllister and Clara Vickers Naftzger, each the owner of an undivided one-third interest as her separate property, as lessors, executed a lease with Standard Oil Company, a California corporation, for the drilling of oil on a portion of the Rancho La Ballona property. The lease covered 150 acres more or less, and recited that the individuals, as first parties, desired to enter into an arrangement with the Standard Oil Company, as second party, whereby Standard "shall develop and operate the said above described real property for oil, gas, asphaltum and other hydrocarbon substances, in accordance with all of the terms and conditions herein set forth * * *." The lease indenture then set forth the mutual covenants and agreements of the parties, which provided, inter alia, for exclusive drilling and operating rights in Standard for the term of two years and so long thereafter as Standard conducted drilling operations thereon and as long as oil, gas, asphaltum or other hydrocarbons were produced in paying quantities. Standard was to pay $75,000 with the execution of the lease and agreed to commence the drilling of a well on the premises within two years and to prosecute the same with reasonable diligence until oil was found in paying quantities. At any [83] time within the two years Stand-

ard could terminate the lease and surrender the premises provided, however, that if during the first 21 months of the lease oil was discovered on specified property, situated east and southeast of the lease premises Standard would, within three months after such discovery, commence the drilling of a well, or terminate the lease. Standard agreed to pay $10 per month per acre, or terminate the agreement, if it had not commenced the drilling of a well within a year after execution of the lease indenture. If Standard failed to obtain oil in paying quantities in its first well, it was required to commence drilling another well within 90 days in order to retain its rights under the lease indenture. If oil was found in paying quantities additional wells were to be drilled as rapidly as at least two strings of tools working with due diligence could complete the wells. After completion of the first or any subsequent well Standard could cease further drillings, surrender the premises and terminate the agreement as to all the premises, except as to 10 acres around each producing or drilling well which could be held free of further drilling obligations as long as oil or gas was produced therefrom. Standard agreed to commence drilling offset wells within 90 days after discovery of oil within 250 feet of boundary lines of leased premises. All labor and materials were to be furnished by Standard and first parties were not chargeable with nor liable for any part thereof. Standard agreed to pay all damages directly occasioned by operations to grow-

ing crops, and in case of dispute as to the amount thereof, arbitration was provided for. The terms "gross proceeds", "sale value", "chargeable expenses" and "net profits" were [84] defined by the lease indenture. Standard was required to keep true and correct books of account and deliver a monthly itemized statement to first parties showing production, "gross proceeds" and "chargeable expenses." Each month, Standard was to account and pay to first parties, under paragraph 31 of the lease, as follows:

A. As a minimum:

(1) a sum representing the "sale value" as herein defined of the one-fifth (1/5th) part of all oil, asphaltum and other hydrocarbon substances, other than gas, extracted and saved from the said premises during the preceding calendar month.

(2) One-fifth (1/5th) of the actual proceeds of all gas produced and saved and sold off the premises by second party during such preceding calendar month.

B. Such sum, if any, in addition, as shall represent the amount by which one-half (1/2) of the "net profits" derived from the operations on said property up to the end of such calendar month shall exceed the aggregate of—

(1) All sums theretofore paid to first parties by second party pursuant to the provisions of this paragraph (31), plus

(2) The amount contemporaneously payable by second party to first parties pursuant to the provisions of Subdivision A of this paragraph.

Standard was to pay all amounts due first parties under the lease, one-third to each of said first parties. If Standard failed for 90 days after written notice to comply with any provisions of the agreement first parties could, at their option, terminate the agreement, except that default as to any well or wells should not affect Standard's operation of any other well or wells situated in any other 10 acre parcel.

On or about January 6, 1925, the same parties executed a lease for the drilling of oil on another portion of the Rancho La Ballona property. This lease covered 80 acres, more or less, was for a term of five years [85] and so long thereafter as oil, gas, etc., were produced in paying quantities unless otherwise surrendered or forfeited by Standard. The provisions of the lease are substantially the same as the provisions of the first lease between the parties. The consideration was different in that $80,000 was paid by Standard with the execution of the lease and the minimum monthly sum to be paid first parties under paragraph 31 A of the January 6, 1925, lease was one-sixth (1/6th) of all oil, etc., and one-sixth (1/6th) of the actual proceeds of all gas produced, saved and sold. Paragraph 31 B of this lease is identical with paragraph 31 B of the lease of April 12, 1924, between the same parties.

On or about April 18, 1924, Anna Vickers Crawford, Florence Vickers McAllister and Clara Vickers Naftzger, as lessors, executed a lease with Associated Oil Company, a California corporation, for the drilling of oil on another portion of the Rancho

La Ballona property. This lease covered 101 acres, more or less, and was for a term of 20 years. It provided for the payment to the lessors of a cash bonus of $50,500; an oil bonus of $50,500 payable only out of net production, paragraph 4 of the lease; "a primary royalty of one-sixth (1/6th) of the net amount of all petroleum, oil, naphtha and other hydrocarbon substances which may be produced and saved from the demised premises, after deducting from the gross product the quantity that may be consumed in the development and operation of said property * * *", paragraph 22 of the lease; and one-sixth of the "proceeds from the sale of all gas produced and sold on the demised premises", paragraph 22 of the lease. The lessee was authorized to contract for the manufacture of casing-head gasoline, provided, [86] at least 35 per cent of said gasoline was reserved to be divided between the lessors and lessee on the basis of one-sixth and five-sixths, respectively, paragraph 22 of the lease.

By paragraph 23 of the lease indenture the lessors reserved and the lessee agreed to render and pay unto the lessors "an additional or secondary royalty which shall become payable and shall be ascertainable as follows * * *." After providing in detail for all charges which should be known as "Operating Charges" and for all items that should be known as "Income Credits", paragraph 23 then provided as follows:

> When, and as soon as the "Income Credits" of said account shall exceed the "Operating Charges" of the Lessee, the Lessor shall be

entitled to a secondary and additional royalty, the amount thereof to be one-half of such difference between the "Operating Charges" and "Income Credits" of said account.

The lessee was to account to the lessors for production and operations monthly and payment made on the 20th day of each month "for all royalties due the Lessors during the preceding calendar month." The lessee had the right to surrender the lease at any time and by the surrender and the execution of a quitclaim deed be released from all further drilling obligations as to such surrendered land. Upon the termination of the lessee's rights "the title to all unsevered petroleum, oil, natural gas and other hydrocarbon substances lying in and under the demised premises shall revert to the respective owners thereof * * *." If the lessee failed for a period of 90 days after written notice given by the lessors to comply with any provisions of the lease, the lessors could, at their option, terminate the lease, with exceptions not here material. [87]

During 1938, 1939, and 1940, petitioner received from Standard Oil Company, pursuant to paragraph 31 A of the Standard leases dated April 12, 1924, and January 6, 1925, gross income from primary royalties in aggregate amounts as follows:

Year	Amount
1938	$50,321.41
1939	45,771.09
1940	39,534.63

During the taxable years petitioner received from Standard Oil Company, pursuant to paragraph 31 B of the aforesaid lease, aggregate sums of money, as follows:

Year	Amount
1938	$62,327.91
1939	52,693.39
1940	44,506.39

During the taxable years petitioner received in cash royalties from Associated Oil Company, pursuant to paragraph 22 of the lease dated April 18, 1924, aggregate sums of money as follows:

Year	Amount
1938	$19,700.03
1939	20,275.00
1940	20,958.88

During the taxable years petitioner received from Associated Oil Company, pursuant to paragraph 23 of the lease dated April 18, 1924, aggregate sums of money as follows:

Year	Amount
1938	$34,729.20
1939	34,883.54
1940	39,941.02 [88]

In determining the deficiencies respondent included in gross income for the respective years the amounts received from Standard and Associated Oil Companies, but allowed deductions for percentage depletion only with respect to receipts under paragraph 31 A of the Standard leases and paragraph 22 of the Associated lease.

Respondent contends that petitioner, as the owner and lessor of oil lands, is not entitled to percentage depletion upon amounts received from her lessees which represent a percentage of the net profits of the lessees from their operations on the lease premises. The controversy relates solely to the lessor's right to deplete these additional payments to be made under the prescribed circumstances and conditions set forth in these leases, and no controversy exists between the parties as to the lessor's right to deplete the one-fifth and one-sixth parts of production provided for in paragraph 31 A of the Standard leases and the one-sixth primary royalty as provided for in paragraph 22 of the Associated lease. **For convenience, therefore, we shall refer to the one-fifth and one-sixth interests retained by the lessor as a royalty interest, or royalty, and to the additional payments to be made by the lessees under said stated conditions and circumstances as "net profits."** Respondent submits that the petitioner's right to share in the net profits of her lessees is not such an economic interest in oil in place as will entitle her to a percentage depletion deduction thereon.

We believe that respondent's argument ignores the critical factor in this case. Petitioner retained an economic interest in the oil by virtue of the royalty interest retained in each of the leases. Having [89] such an interest, the question is what was her "gross income from the property" under section 114 (b)(3) for the purpose of the depletion deduction allowed by section 23 (m) of the Internal

Revenue Code. This question was considered and decided in our decision in Kirby Petroleum Co., 2 T. C. . . . , promulgated December 30, 1943, which followed W. S. Green, 26 B. T. A. 1017, and Marrs McLean, 41 B. T. A. 565, and distinguished Helvering v. Elbe Oil Land Development Co., 303 U. S. 372. Upon the authority of the Kirby Petroleum Co. case and the cases therein cited, decision here must be for the petitioner on the contested issue.

In addition we wish to point out that the leases granted the exclusive right to develop and operate the premises for oil, gas and other minerals. The other property rights were retained by lessors. The interest retained by the petitioner-lessor was unquestionably an economic interest, and under the terms of the leases, the lessees were entitled only to that portion of the oil, gas and other mineral produced, extracted and saved, and upon forfeiture or surrender of the leases, or any part thereof, the economic interest would still be in the petitioner-lessor to the extent of her one-third ownership thereof.

Since other adjustments were involved in determining the deficiencies herein, and since respondent erred in the making of certain of said adjustments, as stipulated by the parties.

Enter:

Decision will be entered under Rule 50.

Entered Mar 24 1944 [90]

The Tax Court of the United States
Washington

Docket No. 111047

ANNA VICKERS CRAWFORD,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the Court's Memorandum Opinion, entered March 24, 1944, the respondent having filed a recomputation of tax on May 16, 1944, and the petitioner having filed an acquiescence in said recomputation on June 2, 1944, it is

Ordered and Decided: That there are deficiencies in income tax of $126.99, $65.29 and $95.13 for the calendar years 1938, 1939, and 1940, respectively.

(Signed) WILLIAM W. ARNOLD
Judge.

Entered Jun 7 1944

(Copies Served on Both Parties) [91]

In the United States Circuit Court of Appeals
for the Ninth Circuit

BTA Docket No. 111047

JOSEPH D. NUNAN, JR.
Commissioner of Internal Revenue,
Petitioner on Review,

v.

ANNA VICKERS CRAWFORD,
Respondent on Review.

PETITION FOR REVIEW AND ASSIGNMENTS OF ERROR

To the Honorable Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Now Comes Joseph D. Nunan, Jr., Commissioner of Internal Revenue, by his attorneys, Samuel O. Clark, Jr., Assistant Attorney General, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and Bernard D. Daniels, Special Attorney, Bureau of Internal Revenue, and respectfully shows:

I.

JURISDICTION

Joseph D. Nunan, Jr., United States Commissioner of Internal Revenue, hereinafter referred to as the Commissioner, holding office by virtue of the laws of the United States, hereby petitions the United States Circuit Court of Appeals for the Ninth Circuit to review the decision entered by The

Tax Court of the United States on June 7, 1944, pursuant to its Memorandum [92] Opinion entered March 24, 1944, ordering and deciding that there are deficiencies in income tax in the amounts of $126.99, $65.29 and $95.13 for the calendar years 1938, 1939, and 1940, respectively, due from Anna Vickers Crawford, respondent on review.

That Anna Vickers Crawford, respondent on review, hereinafter referred to as the taxpayer, filed her individual income tax returns for the calendar years 1938, 1939 and 1940 with the Collector of Internal Revenue for the Sixth District of California, at Los Angeles, California, whose office is within the jurisdiction of the United States Circuit Court of Appeals for the Ninth Circuit.

This petition for review is filed pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code.

II.

NATURE OF CONTROVERSY

At all times herein mentioned taxpayer owned an undivided one-third interest in and to certain property situated in the County of Los Angeles, California, known as Rancho La Ballona, a tract of land of 417.330195 acres. On or about April 12, 1924, taxpayer, together with Florence Vickers McAllister and Clara Vickers Naftzger, each the owner of an undivided one-third interest as her separate property, as lessors executed a lease with Standard Oil Company, a California corporation, for the drilling of oil on a portion of the Rancho La Ballona property.

On or about January 6, 1925 the same parties executed a second lease for the drilling of oil on another portion of the said Rancho La Ballona property. [93]

On or about April 18, 1924, the taxpayer, together with Florence Vickers McAllister and Clara Vickers Naftzger, as lessors, executed a lease with the Associated Oil Company, a California corporation, for the drilling of oil on another portion of the said Rancho La Ballona property.

In each of the three leases the lessors retained a royalty interest. In addition, the leases provided that a certain percentage of the "net profits" derived from the operations on said property be paid to the lessors.

During the years 1938, 1939 and 1940, the taxpayer received "royalties" from the Standard Oil Company in the respective amounts of $50,321.41, $45,771.09 and $39,534.63, and, from Associated Oil Company for said years, "royalties" in the respective amounts of $19,700.03, $20,275.00 and $20,958.88. In addition to the "royalties" received, the taxpayer received a portion of the "net profits" from the operation of the property, from the Standard Oil Company for the years 1938, 1939 and 1940 the respective amounts of $62,327.91, $52,693.39 and $44,506.39, and from the Associated Oil Company for said years the respective amounts of $54,729.20, $34,883.54 and $39,941.02. All of the money so received, was included in the taxpayer's gross income for the respective years.

In computing the net income for each of the years 1938, 1939 and 1940 the taxpayer claimed as a deduction statutory depletion in the amount of 27½ per cent on all of the income received from the Standard Oil Company and the Associated Oil Company pursuant to the terms of the leases. The [94] Commissioner, in his determination of the taxpayer's net income for said years, allowed as a deduction statutory depletion of 27½ per cent with respect to the "royalty" income received by the taxpayer, and, disallowed as a deduction the statutory depletion claimed by the taxpayer with respect to the "net profits" received under the terms of the leases. The amounts of "net profits" received by the taxpayer from the operation of the property in each of the years 1938, 1939 and 1940 were, respectively, $97,057.11, $87,576.93 and $84,447.41, and the amounts of statutory depletion disallowed as a deduction by the Commissioner on said income were respectively, $26,690.71, $24,083.66 and $23,223.04. The decision of The Tax Court holds that the taxpayer-lessor retained an economic interest in the oil by virtue of the royalty interest retained in each of the leases and, therefore, entitled to statutory depletion with respect to the "net profits" from the operation of the property received in the years 1938, 1939 and 1940.

The Commissioner presents that the decision of The Tax Court is erroneous as being contrary to the weight of authority and the controlling principles of economic interest concept in respect to depletable oil and gas properties.

III.

ASSIGNMENTS OF ERROR

That the Commissioner, being aggrieved by the opinion and decision of The Tax Court of the United States in this proceeding, hereby petitions [95] for a review of said opinion and decision by the United States Circuit Court of Appeals for the Ninth Circuit, and for the correction of the manifest errors which therein occurred, and intervened to his prejudice. The errors committed by The Tax Court, which are relied upon by the Commissioner as the basis of this petition for review, are as follows:

That The Tax Court of the United States erred:

(1) In holding and deciding that the taxpayer is entitled to deductions for percentage depletion in the years 1938, 1939 and 1940 in the respective amounts of $26,690.71, $24,083.66 and $23,223.04.

(2) In failing to hold and decide that the taxpayer is not entitled to deductions for percentage depletion for the years 1938, 1939 and 1940 in the respective amounts of $26,690.71, $24,083.66, and $23,223.04.

(3) In holding and deciding, in effect, that the amounts of $97,057.11, $87,576.93 and $84,447.41, received by the taxpayer in the years 1938, 1939 and 1940, respectively, were paid to her by reason of a reserved interest in oil in place.

(4) In failing to hold and decide that the amounts of $97,057.11, $87,576.93 and $84,447.41 received by the taxpayer in the years 1938, 1939 and

1940, respectively, were not paid to her by reason of a reserved interest in oil in place.

(5) In holding and deciding that the amounts of $97,057.11, $87,576.93 and $84,447.41 received by the taxpayer in the years 1938, 1939 and 1940, respectively, represented proceeds from an economic or depletable interest in oil in place. [96]

(6) In ordering and deciding that there are deficiencies in income tax for the years 1938, 1939 and 1940 in the respective amounts of $126.99, $65.29 and $95.13.

(7) In failing to hold and decide that there are deficiencies in income tax for the years 1938, 1939 and 1940 in the respective amounts of $16,675.23, $14,997.16 and $15,933.23.

(8) In that its decision is contrary to law and regulations and is not supported by substantial evidence.

Wherefore, the Commissioner petitions that said findings of fact and opinion and decision of The Tax Court of the United States be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit; that a transcript of the record be prepared in accordance with the law and the rules of said Court and be transmitted to the Clerk of said Court for filing, and that appropriate action be taken to the end that the errors herein com-

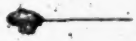
plained of may be reviewed and corrected by said Court.

(Signed) SAMUEL O. CLARK, Jr. CAR
Assistant Attorney General
Signed J. P. WENCHEL CAR
Chief Counsel
Bureau of Internal Revenue
Counsel for Petitioner on Review

Of Counsel:

BERNARD D. DANIELS
Special Attorney
Bureau of Internal Revenue

[Endorsed]: T.C.U.S. Filed Aug. 28, 1944. [97]



[Title of Circuit Court of Appeals and Cause.]

NOTICE OF FILING PETITION FOR REVIEW

To: Sidney D. Krystal, Esquire
505 Title Insurance Building
433 South Spring Street
Los Angeles, California
Attorney for Respondent on Review.

You are hereby notified that the Commissioner of Internal Revenue did, on the twenty-eighth day of August, 1944, file with the Clerk of The Tax Court of the United States, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit, of the

decision of The Tax Court of the United States heretofore rendered in the above-entitled cause. A copy of the petition for review, as filed, is hereto attached and served upon you.

Dated this twenty-eighth day of August, 1944.

Signed J. P. WENCHEL CAR
Chief Counsel
Bureau of Internal Revenue

Personal service of the above and foregoing notice, together with a copy of the petition for review is hereby acknowledged this 2nd day of September, 1944.

(Sgd.) SIDNEY D. KRYSTAL
Attorney for Respondent on Review

[Endorsed]: T.C.U.S. Filed Sept. 21, 1944. [98]

[Title of Circuit Court of Appeals and Cause.]

NOTICE OF FILING PETITION FOR REVIEW

To: Mrs. Anna Vickers Crawford
822 Roosevelt Building
727 West Seventh Street
Los Angeles, California

You are hereby notified that the Commissioner of Internal Revenue did, on the twenty-eighth day of August, 1944, file with the Clerk of The Tax Court of the United States, at Washington, D. C., a petition for review by the United States Circuit

Court of Appeals for the Ninth Circuit, of the decision of The Tax Court of the United States heretofore rendered in the above-entitled cause. A copy of the petition for review as filed, is hereto attached and served upon you.

Dated this twenty-eighth day of August, 1944.

(Signed) J. P. WENCHEL, CAR
Chief Counsel, Bureau of Internal Revenue

Personal service of the above and foregoing notice, together with a copy of the petition for review is hereby acknowledged this 2nd day of September, 1944.

(Signed) ANNA VICKERS CRAWFORD
Respondent on Review

[Endorsed]: T.C.U.S. Filed Sept. 21, 1944. [99]

[Title of Circuit Court of Appeals and Cause.]

NOTICE OF FILING DESIGNATION OF CONTENTS OF RECORD ON REVIEW AND STATEMENT OF POINTS

To: Sidney D. Krystal, Esquire
505 Title Insurance Building
433 South Spring Street
Los Angeles, California
Attorney for Respondent on Review

Please take notice that on the 23rd day of September, 1944, the Commissioner of Internal Rev-

enue, petitioner on review, by his counsel, Samuel O. Clark, Jr. Assistant Attorney General, and J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, filed with the Clerk of The Tax Court of the United States as a Designation of Contents of Record on Review and a Statement of Points, in the above-entitled cause.

Copies of the Designation of Contents of Record on Review and the Statement of Points, as filed, are attached hereto and served upon you.

Dated this 23rd day of September, 1944.

(Signed) SAMUEL O. CLARK, JR., SLY
Assistant Attorney General

(Signed) J. P. WENCHEL, SLY
Chief Counsel, Bureau of Internal Revenue

Service of the foregoing Notice of Filing and one copy each of the Designation of Contents of Record on Review and Statement of Points, are hereby acknowledged this 26th day of September, 1944.

(Signed) SIDNEY D. KRYSTAL
Attorney for Respondent on Review

[Endorsed]: T.C.U.S. Filed Oct. 2, 1944. [100]

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS

Now Comes Joseph D. Nunan, Jr., Commissioner of Internal Revenue, the petitioner on review, by his counsel, Samuel O. Clark, Jr., Assistant Attorney General, and J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and hereby asserts the following errors on which he intends to rely in this review:

1. The Tax Court of the United States erred in holding and deciding that the taxpayer is entitled to deductions for percentage depletion in the years 1938, 1939 and 1940 in the respective amounts of $26,690.71, $24,083.66 and $23,223.04.

2. The Tax Court of the United States erred in failing to hold and decide that the taxpayer is not entitled to deductions for percentage depletion for the years 1938, 1939 and 1940 in the respective amounts of $26,690.71, $24,083.66 and $23,223.04.

[101]

3. The Tax Court of the United States erred in holding and deciding in effect, that the amounts of $97,057.11, $87,576.93 and $84,447.41, received by the taxpayer in the years 1938, 1939 and 1940, respectively, were paid to her by reason of a reserved interest in oil in place.

4. The Tax Court of the United States erred in failing to hold and decide that the amounts of $97,057.11, $87,576.93 and $84,447.41 received by the taxpayer in the years 1938, 1939 and 1940, respectively, were not paid to her by reason of a reserved interest in oil in place.

5. The Tax Court of the United States erred in holding and deciding that the amounts of $97,057.11, $87,576.93 and $84,447.41 received by the taxpayer in the years 1938, 1939 and 1940, respectively, represented proceeds from an economic or depletable interest in oil in place.

6. The Tax Court of the United States erred in ordering and deciding that there are deficiencies in income tax for the years 1938, 1939 and 1940 in the respective amounts of $126.99, $65.29 and $95.13.

7. The Tax Court of the United States erred in failing to hold and decide that there are deficiencies in income tax for the years 1938, 1939 and 1940 in the respective amounts of $16,675.23, $14,997.16 and $15,933.23.

8. The Tax Court of the United States erred in that its decision is contrary to law and regulations and is not supported by substantial evidence.

(Signed) SAMUEL O. CLARK, JR., CAR
Assistant Attorney General

(Signed) J. P. WENCHEL, CAR
Chief Counsel, Bureau of Internal Revenue

Service of a copy of the within Statement of Points is hereby admitted this.....day of ....., 1944.

.....
Attorney for Respondent on Review

[Endorsed]: T.C.U.S. Filed Sept. 23, 1944. [102]

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF CONTENTS OF RECORD ON REVIEW

To the Clerk of The Tax Court of the United States:

You will please prepare, transmit and deliver to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, copies duly certified as correct of the following documents and records in the above-entitled cause in connection with the petition for review by the said Circuit Court of Appeals for the Ninth Circuit, heretofore filed by the Commissioner of Internal Revenue:

1. Docket entries.
2. Pleadings:
   (a) Petition (including Exhibit "A", deficiency letter attached).
   (b) Answer.
3. Agreed Stipulation of Facts with Exhibits 1-A, 2-B and 3-C attached.
4. Memorandum Opinion of The Tax Court of the United States.
5. Decision of The Tax Court of the United States.
6. Petition for Review, together with proof of service of notice of filing petition for review and of service of a copy of the Petition for Review.

[103]

7. Notice of Filing Designation of Contents of Record on Review and Statement of Points, to-

gether with proof of service of Notice of Filing and service of a copy of each document, as filed.

8. Statement of Points to be relied upon.

9. This Designation of Contents of Record on Review.

(Signed) SAMUEL O. CLARK, JR., CAR
Assistant Attorney General

(Signed) J. P. WENCHEL, CAR
Chief Counsel, Bureau of Internal Revenue
Counsel for Petitioner on Review

Service of a copy of the within Designation of Contents of Record on Review is hereby admitted and agreed to this....day of....., 1944.

.....
Sidney D. Krystal
505 Title Insurance Building
433 South Spring Street
Los Angeles, California
Attorney for Respondent on Review

[Endorsed]: T.C.U.S. Filed Sept. 23, 1944. [104]

The Tax Court of the United States
Washington.

Docket No. 111047

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

vs.

ANNA VICKERS CRAWFORD,
Respondent.

CERTIFICATE

I, B. D. Gamble, clerk of The Tax Court of the United States do hereby certify that the foregoing pages, 1 to 104, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 2nd day of Oct., 1944.

[Seal] B. D. GAMBLE,
Clerk, The Tax Court of the
United States

[Endorsed]: No. 10885. United States Circuit Court of Appeals for the Ninth Circuit. Commissioner of Internal Revenue, Petitioner, vs. Anna Vickers Crawford, Respondent. Transcript of the Record. Upon Petition to Review a Decision of The Tax Court of the United States.

Filed October 6, 1944.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10,885

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

vs.

ANNA VICKERS CRAWFORD,
Respondent.

PETITIONER'S DESIGNATION OF RECORD TO BE PRINTED IN THE RECORD ON APPEAL

The Commissioner of Internal Revenue, petitioner, having taken an appeal to the Circuit Court of Appeals for the Ninth Circuit from the judgment of the Tax Court of the United States rendered in this case, designates all of the record on

appeal in Docket No. 10885 (including this "Designation") for printing.

SAMUEL O. CLARK, JR.,
Assistant Attorney General

Dated: October 28, 1944.

Service of the above Designation of Record to be Printed in the Record on Appeal admitted this 28th day of October, 1944.

SIDNEY D. KRYSTAL

[Endorsed]: Filed Oct. 30, 1944. Paul P. O'Brien, Clerk.

Proceedings Had in the United States Circuit Court of Appeals for the Ninth Circuit

Excerpt from Proceedings of Friday, March 16, 1945.
Before DENMAN, STEPHENS, AND HEALY, Circuit Judges.

Order of submission

Ordered petition to review herein argued by Mr. Hilbert P. Zarky, Special Assistant to the Attorney General, counsel for petitioner, and by Mr. Sidney D. Krystal, counsel for respondent, and submitted to the court for consideration and decision.

Excerpt from Proceedings of Saturday, April 21, 1945.
Before DENMAN, STEPHENS, AND HEALY, CJJ.

Order directing filing of opinion and filing and recording of judgment

By direction of the Court, ordered that the typewritten opinion this day rendered by this Court in above cause be forthwith filed by the clerk, and that a judgment be filed and recorded in the minutes of this Court in accordance with the opinion rendered.

In the United States Circuit Court of Appeals for the Ninth Circuit

No. 10,885

COMMISSION OF INTERNAL REVENUE, PETITIONER

v.

ANNA VICKERS CRAWFORD, RESPONDENT

Upon Petition to Review a Decision of the Tax Court of the United States

April 21, 1945

Before DENMAN, STEPHENS, and HEALY, Circuit Judges.

DENMAN, Circuit Judge. Petitioner seeks a review of the Tax Court's order holding that the taxpayer, owner of California oil land, who has made two leases of portions thereof to the Standard Oil Company of California, the lessee, to drill for and produce oil therefrom, which leases are terminable by breach of the drilling and other agreements of the lessee, is entitled to depletion deductions for the agreed royalty of a percentage of the net profits of

the lessee from its sale of oil extracted from the leased land. The tax years in question are 1938, 1939, and 1940.

The Tax Court relied, in part, upon our decision in Commissioner v. Felix Oil Co., 144 F. 2d 276, in which we decided that such a lessor is entitled to such deductions for the tax years 1938 and 1939 as a part of the "gross income from property" under Sec. 114 (b) (3) of the Revenue Code. This same section is controlling for the tax year 1940.

Petitioner's brief and argument in the instant case present the same argument, based upon the same authorities, as in the Felix case, save that it cites the recent case of Commissioner v. Kirby Petroleum Co., decided by the Fifth Circuit on March 5, 1945, Judge Hutcheson dissenting.

In that case the majority opinion states of such a payment of net profits as here reserved that it "is not the payment in kind of royalty oil or its equivalent" and contends that the net profit from the operation and sale of the oil paid to the owner of the land is not part of the gross income the land owner receives from the property. Unless the majority opinion can be distinguished on the ground that in Texas the title to the oil passes to the lessee,[1] whereas in California [2] it remains in the lessor, we are not in accord with its holding.

The Supreme Court cases relied upon in the Kirby Petroleum case are all based on the absence of a property interest in the oil property at the time the income from its sale is paid. In Helvering v. O'Donnell, 303 U. S. 370, as here, "The question is whether respondent [taxpayer] had an interest, that is, a capital investment, in the oil and gas in place." It was held that the taxpayer's prior interest was merely that of a stockholder in the corporation owning the oil land and that, as stockholder, he did not have any capital interest in the corporation's property. Hence he was not entitled to depletion on the "one-third of the net profits derived from the development and operation of the properties."

In Helvering v. Elbe Oil Land Development Co., 303 U. S. 372, the taxpayer had conveyed all his interest in the oil land. Relying upon the O'Donnell case, the Supreme Court held that the net profits from the operation agreed to be paid after title had passed from the taxpayer were not subject to depletion.

In these two cases all the Supreme Court's discussion of capital interest in the oil becomes meaningless if a royalty is not subject

[1] Theisen v. Robinson, 117 Texas 489, 516, 8 S. W. 646, 651; Group No. 1 Oil Corp. v. Bass, 283 U. S. 279, 281.

[2] Under California law the owner of oil land, who leases it for oil production with a royalty interest therein, retains his fee therein. The lessee has a profit a prendre in the right to take the oil. If the owner transfers to another his right to collect the royalty, the owner retains the title in the land and the transferee of the royalty has an easement therein. Callaghan v. Martin, 3 Cal. 2d 110, 123, 124.

to depletion if payable in "net profits" of the operation. Cf. dissent Judge Hutcheson in Kirby case.

The Kirby majority opinion does not question that if the royalty there had been a fraction of the gross cash proceeds received by the lessee from the sale of the oil taken from the land, it would be subject to depletion as "gross income from the property" to the taxpayer. Cf. Thomas v. Perkins, 301 U. S. 655; Anderson v. Helvering, 310 U. S. 404, 407, 410. We are unable to see that it is any less "gross income" to the taxpayer from his interest in the fee in the property because the lessee deducts its cost of production before paying the taxpayer. That it is net proceeds to the lessee does not make it any the less the gross income from the land to the owner of the fee. Cf. dissent of Judge Hutcheson.

The majority opinion in the Kirby case seems to regard as a reason the net income from the oil is to be deemed not within the depletion provision, that it requires more calculation than the determination of the sales price of the oil produced from the taxpayer's fee. We can see no reason why the calculations necessary in all other net profit income returned during the taxable year makes the royalty paid the taxpayer any the less part of the gross income to the taxpayer from the fee owned by him. We see nothing in Commissioner v. Kirby or the argument here to require an overruling of our decision in Commissioner v. Felix Oil Co., supra.

The order of the Tax Court is

Affirmed.

(Endorsed.) Opinion filed April 21, 1945.

PAUL P. O'BRIEN, *Clerk.*

Judgment

Upon petition to review a Decision of the Tax Court of the United States.

This cause came on to be heard on the transcript of the record from The Tax Court of the United States, and was duly submitted:

On Consideration Whereof, It is now here ordered and adjudged by this Court, that the Decision of the said Tax Court of the United States in this cause be, and hereby is affirmed.

(Endorsed) Judgment. Filed and entered April 21, 1945.

PAUL P. O'BRIEN, *Clerk.*

Certificate of Clerk, U. S. Circuit Court of Appeals for the Ninth Circuit, to Record Certified Under Rule 38 of the Revised Rules of the Supreme Court of the United States

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing

one hundred and thirty-six (136) pages, numbered from and including 1 to and including 136, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of Hon. Charles Fahy, Solicitor General of the United States, counsel for the petitioner, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 13th day of June 1945.

[SEAL] PAUL P. O'BRIEN, *Clerk:*

U. S. GOVERNMENT PRINTING OFFICE: 1945

Supreme Court of the United States

Order allowing certiorari

Filed October 8, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted, and the case is transferred to the summary docket and set to follow No. 56.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice JACKSON and Mr. Justice BURTON took no part in the consideration or decision of this application.

U. S. GOVERNMENT PRINTING OFFICE: 1945